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*From Pres. Angell*

*Sept. 22, 92*

## OUR REVENUE SYSTEM.

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## HISTORY OF THE PROCEEDINGS

IN THE CASE OF

**Phelps, Dodge & Co.**

OF NEW YORK.



## OUR REVENUE SYSTEM.

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# HISTORY OF THE PROCEEDINGS

IN THE CASE OF

PHELPS, DODGE & CO.

OF NEW YORK,

AND

VINDICATION OF THE FIRM.

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*New York :*

MARTIN'S STEAM PRINTING HOUSE, 111 JOHN STREET.

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1873.



## INTRODUCTION.

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FREQUENT requests for the details of the controversy between the United States Customs authorities and the house of Phelps, Dodge & Co., have induced their collection in the following pages.

The original and full statement made by the firm was subsequently strengthened, it will be found, by the official publication from the Treasury Department of the voluminous correspondence in the case.

To these have been added extracts from leading newspapers and a summary of the action of the Chamber of Commerce.

The Press has reviewed all the questions in dispute with care and impartial justice, and has pronounced the honor and integrity of the parties, who have suffered so deeply, to be free from stain. This has to a large extent compensated for the wide and indiscriminating publication, by interested persons, of the charges originally made.

Among the numerous editorials bearing upon this affair, to present which would require volumes instead of pages, the exceptions to the general verdict are but few. Some of the more thoughtful and judicial articles have been selected from daily and weekly journals, and are here given without note or comment, beyond what is strictly necessary to explain their connection with the progress of the case.

NEW YORK CITY, *June 1, 1873.*

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# The Case of Phelps, Dodge & Co.

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## STATEMENT OF THE FIRM.

W. D. Daniels

TO OUR FRIENDS AND THE PUBLIC:

For a period of nearly four months our firm has been made the subject of accusation and criticism, so harsh and unjust that it has seemed to us as if the generally accepted rule, which assumes "all accused innocent until proved to be guilty," had been, at least in our case, set aside in favor of that other principle "that all accused shall be held guilty until they establish their innocence."

During nearly all this period, by reason of various circumstances, such as the fact that the matters involved were still the subject of controversy between our firm and the Government; and above all, that by the taking and retention of our books and papers by the authorities we were not in full possession of all the evidence relied on by the Government to sustain the charges preferred against us, it has not been considered expedient to say anything in the way of public explanation; but the time has now come when an explanation is proper.

In the extensive importing business in which we are engaged, tin plate constitutes the chief article subject to an *ad valorem* duty; and we are associated with the house of Phelps, James & Co., of Liverpool, which is largely occupied with its procurement and shipment. As the trade which we do in this article is very large, and as it is entirely impossible to purchase at any time any very large quantity from accumulated stocks, it has been long the custom of our Liverpool house to arrange for the manufacture of supplies through contracts extending over lengthened periods; and also, in many instances, to advance to manufacturers the various constituents of their business, and even capital, and receive in return the finished product at prices conditional upon the fluctuating values of the raw materials, and through settlements effected at very considerable intervals.

The complicated tariff question now arises: In what manner are tin plates and similar products manufactured and purchased under such conditions to be invoiced?

## REQUIREMENTS OF THE LAW.

The fundamental tariff law provides that duties on merchandise shall be assessed on "*the actual market value* or wholesale price thereof at the period of exportation, in the principal markets of the country from which the same shall have been imported;" but another provision of another act further requires that although the duties assessed must be on "*market value*," the invoice accompanying it in case of purchase must declare the *actual cost*—a statement which in some cases, as above explained, is often a matter very difficult of exact determination at the precise date of shipment.

To add still further to the complication of legal requirement, the ruling of the United States Treasury, according to which the law is administered, is to this effect: That all purchased goods must be entered at the Custom House at *actual cost* when that is higher than the market value at the time of shipment; but at *market value* when that is higher than actual cost. With a business largely done, as ours is, on contracts for future delivery, it therefore often happens that, on an advancing market, the contract price paid by us may be considerably less than the market value at the time of shipment, in which case, if we invoice at Liverpool at the price paid, the authorities in New York may advance the value, or, under certain circumstances, demand a penalty or complete forfeiture on the ground of undervaluation. On the other hand, on a falling market, an invoice rate representing actual cost may be greatly in excess of market value at the time of shipment; but in such cases no allowance whatever is made to the importer. And thus it has actually happened that during the past year—which has been characterized by the most remarkable and violent fluctuations in the prices of metals (tin plate selling for 28s. per box in January, 44s. in July, and 35s. in December)—we have paid, on aggregate overvaluations, a very large increase of duties over and above what would have been required had the goods been purchased at the date of shipment.

Again, the very form of consular oath, to which, as citizens of the United States interested in a house in Liverpool, we are required to subscribe, is not necessarily equivalent to the declaration which the Consul himself is required to make and attach to the invoice; inasmuch as the *first* declares that the actual cost, while the *second*, which immediately follows, and is upon the same page, is to the effect that the Consul believes the merchant's declaration, and that the invoice exhibits the actual market valuation, which last the invoice cannot, unless "actual cost" and "market value" are held to be equivalent.

With this brief explanation of the letter of the law under which our goods are required to be invoiced, and its method of administration, we will next endeavor to make clear wherein, through its supposed infraction, we have offended and been made subject to penalties.

## CAUSES OF THE DIFFICULTY.

As has been already stated, the articles before mentioned, imported by our firm, are purchased in large quantities of many different makers, sometimes outright, sometimes under conditional and long-continued contracts. They arrive at Liverpool in many different lots every day, and are sent directly to the steamer, which often sails the same day. Triplicate invoices, one of which must go by the steamer with the goods, are required to be made out and taken to the Consul's office for certification before one o'clock.

Under such circumstances small errors in the invoices received from the many different makers, or disagreements between the Liverpool house and the makers in respect to the qualities or prices to be paid for particular goods, are almost unavoidable; but at the same time it was not charged by the Government that any of our goods had been passed through the Custom House except at their fair market value. It has, however, happened that on the receipt from time to time of sundry small quantities of special goods—mostly extra and unusual sizes—due on old orders or contracted for months in advance of delivery, our Liverpool correspondents have been at a loss to know how to invoice them.

The market value, in the first place, was different from contract cost. The requirement of law next was that they should swear before the Consul as to actual cost, and that the Consul should certify as to market value, which, according to the practice of the Consul's office, is treated as the same. Then, as the goods in question were mainly remnants of contracts delivered long after the time agreed on, and as there was a possibility of some deduction in the periodic settlements for non-fulfilment of contract, the matter of cost itself, within certain limitations, was not fixed, but contingent. Under such circumstances, as the quantity and value of the goods in question—as will be shown hereafter—were very small as compared with our regular and accompanying shipments, our friends in Liverpool, without, perhaps, sufficient consideration, met the practical difficulty of the law by marking up these small items in the invoice where market value had advanced over cost, and making a reduction where market value had declined below cost.

In such instances, and in the way of explanation, the Liverpool house sometimes sent small memoranda by the same or the following steamer, and in a few cases letter-press copies of the bills of the manufacturers to them, the precise object of which bills and memoranda were to explain that such and such numbers of an invoice were remnants of an old order in respect to which the contract prices varied to a small extent, more or less than the invoiced (but intended to be) true market value at the time of shipment; the exact truth, as investigation subsequently showed, being, that the changes in question, on the side of *over-*

valuation and in favor of the Government, were very largely in excess of those in the direction of *under*-valuation and in our favor.

These bills and memoranda we, carelessly, did not examine personally, not regarding them in any sense as invoices or as of the slightest importance as respects the Custom House; and, under these impressions, they were, on arrival, handed over to the assistant clerk who copied invoices into our foreign invoice book, to be pinned, without concealment, to its pages.

#### ORIGIN AND PROGRESS OF THE SUIT.

It is foreign to this explanation to dwell on the origin of the suit instituted against us by the Government, but it is sufficient to say that this clerk, who some years since was taken into our employment in destitute circumstances, and who was dismissed for complicity in allowing dishonest persons to enter our store secretly and at night, in order to inspect our letter-books and papers, did carefully examine the bills and memoranda in question. And, after surmising that they were not in accordance with the letter of the law, and, in place of acquainting us with the fact, *as was his duty*, removed them from the invoice book to which they had been attached, and, after suppressing those showing instances where the Government had been benefited, but collecting and carefully preserving the few where a small benefit had accrued to the firm, put himself in communication with the Treasury agents.

What followed was an invitation for two members of the firm to visit the Custom House, where they were informed that evidence had been obtained by the Government implicating in extensive frauds the house which they represented.

They at once denied any purpose or intent to defraud the Government, as well as any knowledge whatever of any irregularities in our business in connection with the Custom House; and, as a further earnest of good faith and conscious integrity, they at once waived the service of a warrant which had been prepared against our books and papers, and voluntarily and immediately placed the same at the disposal of the authorities. We also, at the same time, gave our word that, if the Government had any just claims against us by reason of the infraction of any law, we would pay the same to the uttermost farthing, without causing legal delays or expenses; and subsequently, at the suggestion of the United States District Attorney, Hon. Noah Davis, now Justice of the Supreme Court of New York, that the matter should be adjusted on the basis of our paying an amount equal to the whole value of the items, in our different invoices, against which any charge of irregularity had been preferred, we accepted the same as a basis of settlement. This amount was subsequently approximately ascertained to be \$260,000, which sum was deposited to await the action of the Treasury

Department in a *pro forma* suit which was then agreed upon between the District Attorney and our counsel.

With this understanding, in perfect good faith on our part, and, as we feel bound to acknowledge, with an absence of anything like a spirit of vindictiveness on the part of the authorities, the investigation commenced in December, the Government being in full possession of our books and papers, and also aided by our dismissed clerk, who by becoming an informer would be entitled to a large share of all forfeitures which, through his instrumentality, might be established. The result was that, to our surprise and astonishment, the slips and memoranda of the special goods referred to were regarded by the special agent of the Treasury as constituting in themselves "*duplicate*" invoices and evidences of illegal entry, and as such subjecting us to the full penalty of the statute which, in substance, provides that when any part of an invoice is made in violation of the law, the whole invoice or its value becomes liable to forfeiture, but that the Secretary of the Treasury may accept a compromise of its full penalty when upon the certificates of the Treasury Agent, the District Attorney, and Solicitor of the Treasury, he believes it proper and for the interest of the Government to do so.

#### THE ALLEGED ERRORS.

Having come to this final conclusion, the Government examined all our invoices for a period of five years, and from the whole number, representing an importation of at least forty millions, and on which duties to the extent of upwards of eight millions had been paid, selected about fifty, which by reason of the memorandum slips were held to be vitiated. The aggregate value of all the goods included under this number of invoices was estimated to be about *one million dollars*, and as it was claimed that the Government had the right, after establishing illegality in the smallest particular, to confiscate every item of such invoices, a *pro forma* suit for the above sum was instituted against us. The aggregate value, on the other hand, of the several items in the fifty invoices alleged to be vitiated, amounted, when taken separately, to \$271,017.23; and by the payment of this sum the suit and all claims of the Government were subsequently settled.

But it should not at the same time escape attention that the amount of alleged errors of these several items, whose aggregate value was \$271,000, was in itself a comparatively small sum, not exceeding ten to fifteen thousand dollars if estimated at the maximum, and that of this sum the duties which could have possibly accrued to the Government constituted but a fraction. In short, if they had been assessed at the maximum rate imposed since 1863, the amount would have been less than four thousand dollars, but in fact we are given to understand

that the whole amount of loss which, after a careful examination of our books, it can be claimed that the Government has sustained by reason of the above irregularities whereof we have been accused, (not taking into consideration the cases where we had paid on over-valuations), is not in excess of *two thousand dollars*; or, to put the matter still differently, *if the case had been one between two merchants, covering a space of five years and involving transactions to the extent of \$40,000,000, (and considering only the invoices in question), the supposed discrepancies of account could have been satisfactorily settled by the payment on our part of from two to four thousand dollars; but in the case of the Government and the merchant the former can only be satisfied under existing laws by the payment of \$271,000, and can further claim to have acted generously inasmuch as it did not take from us a million.*

#### AN EXAMPLE.

As further proof and illustration of our statements we give the following example of one of the memoranda returned to us by the authorities after settlement, and regarded by them as fully conclusive against us: In July, 1871, we received per steamer Algeria an invoice of 2,194 boxes tin plates, included under which was a lot of 174 boxes of odd sizes, 24x24 XXXX, and 24x13½ XX, (marks which the trade will understand), the remnant of an old and special contract. All these goods, it is admitted by the Government, were invoiced at their true market value at the time of shipment, were so certified by the Consul at Liverpool, and so passed after examination by the appraiser in New York. But there was, in addition, a memorandum transmitted apprising us that 174 boxes, in virtue of an old contract, would be charged to the Liverpool house at a price which differed from the then actual market value to the extent of about a sixpence per box. The total value of the whole invoice was £3,237 : 14s. The total value of the 174 boxes was £293 : 4s. : 2d., and the difference between the actual market value of these last and their contract cost was £4 : 7s., on which difference the duty of 25 per cent. would have amounted to £1 : 1s. : 9d., or a little more than five dollars. And yet, on account of this small difference in the general settlement, as a penalty we paid the full value of 174 boxes, namely, £293 : 4s. : 2d., or upwards of fourteen hundred dollars. And thus the delinquencies ran throughout the whole extraordinary transaction.

But in admitting these irregularities, we do not admit that the Government by reason of the same has really sustained even the trifling loss that has been estimated; for the very principle which caused a few items to be irregularly invoiced led to errors against us and in favor of the Government of many times the amount claimed to have been lost by the customs; one single contract during

the past year, for special brands and sizes which cost net, £42,889 : 6s., having been invoiced to us at £54,655 : 17s., and passed for the payment of duties at the Custom House at such later valuation.

In view of these facts, it is also proper for us to state why we were induced to yield to rather than contest the demands of the Government when we found they were resolved upon.

And first and foremost, we regarded it as a question *for the Government to determine*, whether the enormous forfeitures incurred by us, without design or motive of fraud, misstatement, or concealment, were to be exacted because it was so written in the law, or were to be adjusted rather to the actual quality of the transaction. But when the measure of forfeiture finally exacted was insisted upon, and its legality was treated as equivalent to its justice, our own sense of its injustice and oppression could not relieve us from the necessity, in which we had before placed ourselves, of accepting the Government measure of its rights and our obligations. It may be true that in our confidence in our rectitude, and in the justice of the Government, we had not given due attention to the disturbing element introduced into the dealings of the Government with its citizens, by the immense private interests of revenue officers and informers which our system has created and tolerates.

A second and subordinate consideration, but one of much weight, especially with the senior members of the firm, confirmed us in disposing of the case by settlement rather than by controversy. In the whole long course of our business it has been at once our fortune and our pride to have had no serious litigations ; and that this enviable record should not be interrupted by long and bitter controversy with the Government seemed but justly within our choice, provided the sacrifice made to secure it was, as it has been, wholly our own. And if there are any who may be inclined to judge us harshly for such a decision, we would ask them to recall to mind the peculiar rigor of our present tariff law ; the enormous confiscations which it is allowed to the Government to make under it, and furthermore, that during the whole continuance of the suit our books and papers would be under the control of the authorities, and our business be liable to be interrupted and our credit affected by rumors and misrepresentations, which it would be exceedingly difficult, if not wholly impossible, to at once refute or answer.

#### CONCLUSION.

In view, then, of this statement, the correctness of which we believe the officers of the Government will affirm in every essential particular, and in support of which we append letters from the special agent of the Treasury Department, the Consul at Liverpool, who for twelve years certified to the correctness of our

invoices, and the gentleman who at the inception of the suit against us filled the office of the United States District Attorney, we will ask the Press, we will appeal to the great masses who know us and who do not know us, whether it is probable that a firm which pays annually to the Government hundreds of thousands of dollars in duties, whose total business transactions are measured annually by millions, would knowingly, willfully, and systematically defraud the revenue by short-paid duties to the extent of a few thousand dollars extended over a period of five years? And we further respectfully ask the Press, and the Community, which may have prejudged us, whether, after so many years of honorable life and unsullied reputation, such a calumny against us can be believed and accepted?

And on this statement, and asking attention to the letters which we annex, we submit our case to the just judgment of our friends and the public.

April 15, 1873.

PHELPS, DODGE & CO.

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No. 1.

*Letter from Hon. NOAH DAVIS, late U. S. District Attorney, and now Judge of the Supreme Court of the State of New York:*

NEW YORK, April 11, 1873.

MESSRS. PHELPS, DODGE & CO.:

GENTLEMEN:

I have received yours of the 9th instant, asking me, now that the proceeding recently taken against you by the Government has resulted in a final settlement, to give you a statement in relation to the claim made against you, and the manner in which it was met and adjusted by you, and such other matters in connection therewith as I may feel at liberty to communicate. As an act of justice toward you I think it my duty to comply with the request.

Information in the case was first given to B. G. Jayne, Esq., special agent of the Treasury Department. At this time I was the United States Attorney for this District—the officer charged with the duty of conducting legal proceedings in such cases. After Mr. Jayne had partially investigated the case, he laid the facts and papers then in his possession before me. I examined them, and came to the conclusion that they were sufficient to justify a more thorough investigation. I requested that some of the leading members of your house should be invited to come to the Custom House, that I might have a personal interview

with them. Mr. William E. Dodge and Mr. James came in response to the Collector's message, and evidently without the slightest idea of its object. I stated to them the charges that had been made, the grounds on which they were based, and the steps that had been taken, and my conclusion that a full investigation ought to be had. Those gentlemen took the matter in a spirit of most perfect fairness and frankness, inviting the closest scrutiny, and offering, without reserve, to place at once in the hands of myself or the other officers of the Government all the books and papers of the firm that might be desired, and to afford every facility in their power to an inquiry into all their dealings with the Custom House, asserting that if any irregularity existed in the dealings of your house with the Government it was unknown to them and wholly unintentional. They also expressed themselves, on behalf of their firm, ready and willing, if there had been any irregularity, to pay not only what the Government might have lost by reason thereof, but any penalty to which they had inadvertently subjected themselves. I suggested that Mr. Jayne, with such assistance as he might need, should go with them to their place of business and receive whatever books and papers he should desire. To this they promptly acceded, and Mr. Jayne did accompany them and was put into possession of the books and papers, and the process for books and papers which had been obtained was withheld by me from service. A full and careful examination was then made by and under the supervision of Mr. Jayne, he having access to all your books and papers and possession of all that were deemed necessary to enable him to ascertain the facts. I was advised from time to time of the progress of the investigation, and when it was concluded I examined the papers and documents presented to me, containing the case of the Government. From this examination I became satisfied that there had been during the past five years a considerable number of violations of the customs revenue laws by your house, all alike in their character; but that those violations had occurred without any actual intent on your part to defraud the revenue. The infractions of the statute were, however, of such a character as left exposed to forfeiture invoices of goods to the amount of about one million of dollars. On conferring with your counsel I found you still desirous to meet and adjust the matter on any basis that would cover any fair claim for duties or penalties that the Government thought proper to enforce. I myself suggested, without knowing what the amount would be, that the value of the articles in the several invoices actually affected by the alleged undervaluation should be ascertained, and that the amount so found should be taken as the basis of the settlement. The suggestion was accepted, and the amount was approximately ascertained at about \$260,000. It was then arranged between your counsel and myself that a suit should be commenced, and that the sum arrived at should be at once paid into court as a settlement of the claims. At that stage of the trans-

action my term of office expired; but I understood that a suit was commenced by my successor, which has been compromised on the basis arranged with me at the value of the articles mentioned, as afterwards ascertained.

If I had come to the conclusion that you had acted with an actual design to defraud the Government I should have insisted upon the forfeiture, not only of the value of the articles above referred to, but of the entire invoices of which they formed a part, amounting to fully one million of dollars; but my examination, with the explanations made to me by you, showed clearly, as I thought and still think, that the idea of defrauding the Government of its lawful duties had never entered your minds, while doing a portion of your business in a manner which the courts would declare to be in conflict with the statutes. I was confirmed in this by the very meagre amount of duties lost to the Government. In a business with you of many millions of dollars, during the period of five years in which the alleged irregularities occurred, and during which you had paid to the Government several millions of dollars in duties, the whole amount lost by the alleged fraud fell short of three thousand dollars.

I have since learned (a fact which I did not know at the time) that by applying the same rule of valuation adopted by you, and which in the instances covered by the settlement resulted in an undervaluation of the same goods in other invoices imported during the same period, the result has in those cases been an overvaluation, upon which the Government received duties beyond what would have been payable under the correct rule of valuation to an amount very considerably in excess of the duties lost. This fact has confirmed my conviction of your entire innocence in the whole business of any actual intent to defraud.

In conclusion, I beg leave to add that during my connection with the office of United States Attorney I knew of no case in which such a prompt and earnest desire to court and aid investigation, to correct any error, and right every wrong that might appear to have been done to the Government or its revenues, was manifested, as that constantly shown in yours.

I am, very respectfully, yours,  
NOAH DAVIS.

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No. 2.

OFFICE OF B. G. JAYNE, SPECIAL AGENT U. S. TREASURY DEP'T,  
CUSTOM HOUSE, NEW YORK, *March 31, 1873.*  
HON. WM. E. DODGE:

DEAR SIR:

The suit brought against your firm for one million dollars was not for duties but for the value of certain invoices.

In these invoices the price of a portion of the merchandise was stated below the purchase price.

The value of that portion of the invoices upon which the value was understated amounted, when taken separately, to \$271,017.23, the sum paid by your firm. The duties lost by the Government by the undervaluation were but a fraction of the sum paid.

Many charges made in the public prints against your firm had no foundation in truth.

Very respectfully, your ob't servant,

[Signed]

B. G. JAYNE.

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No. 3.

CAMDEN, N. J., April 3, 1873.

GENTLEMEN:

In reply to yours of yesterday, I have to say that during the time I was Consul at Liverpool there was every disposition shown by the house of Phelps, James & Co. to comply with the Revenue Laws in making out their invoices. In fact, no house there seemed more solicitous and scrupulous in this particular than did this house. Mr. James, the senior member of this firm, used frequently to consult with me as to the mode of making them out, and the prices or values to be stated.

There were very often difficulties experienced on the part of exporters as to the sums or prices to be inserted when there were long running contracts for the delivery of goods, and this house always had contracts running.

I never saw any disposition on their part to violate the law in any particular, and I do not think they ever did so intentionally.

Very truly yours, etc.,

THOMAS H. DUDLEY.

PHELPS, DODGE & Co.

## COMMENTS OF THE PRESS.

[*From THE NEW YORK TIMES, April 16, 1873.*]

MESSRS. PHELPS, DODGE & CO.

The statement which we publish this morning from Messrs. Phelps, Dodge & Co., in regard to their case with the Government, must strike every impartial mind as candid, clear, and convincing. It forms a sad evidence of how ready a certain class of our people are to join in a cry of calumny against honored names, and it ought to show to a portion of the Press of the country what a cruel wrong they have done to this respected firm, by accusations where "the other side" was never heard. Messrs. Phelps, Dodge & Co., it must be remembered, have the largest business in metals probably of any mercantile house in the world. During the past five years they have imported over \$40,000,000 worth of these products, on which they have paid duties of over \$8,000,000. The whole amount of irregularities charged against them during this period by the Government is only about \$2,000, and this without any suspicion of fraud or intention to evade the law on their part.

Their difficulties arose from the complicated nature of the Revenue laws, and from the enormous range of their transactions. This house imports largely of tin plate. The tariff provides that the duties on this article shall be assessed on its "actual market value" in foreign countries at the period of exportation; but another act requires that the invoice must also declare its "actual cost." There is no difficulty, of course, in ascertaining the market value, and it was never charged against this firm that they had ever passed any goods through the Custom-House, except at their fair market value. The only question was, as to the "actual cost" of the tin plate imported. This was not easy to ascertain. In cases of irregular or extra lots, the goods were often remnants of contracts delivered long after the time agreed upon, when a deduction was probable from nonfulfillment of contract, and, therefore, where cost itself could not be fixed till after a considerable time. These goods came into Liverpool, consigned to the firm, in many different lots every day, from various makers, and under conditional and long-continued contracts. They had all to be invoiced and their actual cost determined, often on the very day of the steamer's sailing. Under these circumstances of uncertainty and haste, the Liverpool house was in the practice of meeting

the difficulty of the law by a proceeding which seems perfectly fair and just. They marked up the small items in the invoice where market value had advanced over cost, and they made a reduction where market value had declined below cost. That this was perfectly fair to the Government is evident from the fact that Messrs. Phelps, Dodge & Co., during the past five years, have overpaid to the Government much more than they have underpaid. In one instance, during the past year, they imported one lot on a single contract of certain special brands, and invoiced them for duties at £54,655, while the actual cost was only £42,889, thus overpaying the Government on that importation alone some \$60,000. Judge DAVIS rightly says, in a letter published in another column, that this fact alone confirms his conviction of their "entire innocence, in the whole business, of any actual intent to defraud."

Unfortunately for the house, the small memoranda and copies of the bills of the actual cost were sent out by the Liverpool firm, their object being merely to give information as to what the original contracts were. They were not treated as in any way confidential or important communications, but were pinned by an ordinary assistant clerk, without concealment, in one of their foreign invoice-books. This man had been rescued by a member of the firm from poverty and starvation, and had been placed, as an act of charity, in this position of clerk. As a return for their kindness, stimulated by the enormous bribes offered by the Revenue laws, he secretly removed these memoranda from the invoice-book, destroying those which showed where the Government had been benefited, and preserving those where a small advantage had accrued to the firm. These memoranda he took to the detective officers.

It is these memoranda which the Revenue officials choose to consider as "duplicate invoices," and on which the whole charge of fraud is based. How unjustly the facts which they give tell against the house may be judged from the following instance: In July, 1871, they imported a lot of 2,194 boxes of tin plates, among which was a lot of 174 boxes of odd sizes. All these goods were admitted to be invoiced at their true market value, but among the memoranda mentioned above there was one stating that the 174 boxes would, on account of an old contract, be charged to the

Liverpool house at about sixpence per box less than the market value. The difference between the market value and the cost amounted to about \$22, on which the duty would have been about \$5. Yet for this small difference the Government inflicted on the firm the penalty of the full value of the 174 boxes, or about \$1,400. In like manner all their other invoices were vitiated where there were these small irregularities, so that under the interpretation of the law made by the Revenue officers they could have been fined \$1,000,000, though the losses suffered by the Government only amounted to \$2,000. The officials, however, compromised, on \$271,000.

The only mistake made by the firm in this matter was in compromising at all. They should have suffered the case to go to the courts, where they would undoubtedly have been mulcted only to the amount of the direct losses to the Government, which, as we have said before, were only some \$2,000. Their reasons for compromising will be easily appreciated by the mercantile community. Their books and papers, during the whole suit, would have been under the control of the authorities. Their business would have been interrupted, their credit injured, and thus enormous losses caused to them. They were surrounded by spies and informers. The Tariff laws are exceedingly complicated and oppressive, and it might well be possible that other mistakes had been made by them which could be taken advantage of by officials who were seeking their ruin. They had, too, the feeling natural to honorable merchants, that in dealing with the Government they were dealing with a generous master, who would not take advantage of a legal technicality to do injustice. That they committed the error of undue confidence in the Government is, after all, more to their credit than to their dishonor. Whatever pecuniary losses this house may have suffered in this transaction, the general unprejudiced public will acquit them of all intention to defraud the Government or to evade the law. Their character stands as pure and unsullied as it has always done during the past.

#### THE INFORMER'S TRADE.

[From an Editorial in THE NEW YORK TIMES,  
April 27, 1873.]

The most profitable employment now in New-York is that of informer. A business whose success was one of the worst signs of the decay of imperial Rome is now extremely thriving in this City. A numerous band of unprincipled vagabonds hang about our mer-

chants' counting-rooms and the Custom-House, and watch and study how they may detect and make use of some omission or unintentional violation of the often contradictory and complicated revenue laws. These degraded informers are in constant consultation with those lawyers who are always ready to make money out of these wretched cases, and who know how to frighten the honorable merchant into some settlement or compromise, whose fruits must go largely into their pockets.

\* \* \* \* \*

We are informed that this villainous profession, stimulated by the plunder won in the Dodge case, are very busy now around the Custom-House and in many a counting-room. They bribe weak clerks and pay unprincipled subordinates. Every merchant in large affairs is surrounded now by a network of miserable conspiracy. Of course, the first and safest way is to have every dealing with the Government so clear and upright that the whole world might see it. But if, beyond this, there are provisions so difficult and contradictory that no human foresight could avoid mistakes in them, then, when such errors are picked out by the informers and detectives, let them go to the courts.

[From the N. Y. JOURNAL OF COMMERCE, April 16, 1873.]

We present below a full and complete statement, by the parties most deeply interested, of the celebrated case which recently attracted so much attention. It is impossible, we think, for any candid reader to believe that the firm in question had any intention to defraud the Revenue. The whole system of confiscations for alleged under-valuation is wrong, and adroitly administered is one of the most powerful black-mailing agencies in existence. There is a frankness about the annexed communication which will commend it to all who are interested.

[From the N. Y. EVENING POST, April 16, 1873.]

#### THE CASE OF PHELPS, DODGE & CO.

Messrs. Phelps, Dodge & Co. have to-day given to the public a statement of the matter in controversy between them and the Government, wherein they were charged with defrauding the Revenue, and in settlement of which they have paid into the Treasury of the United States about \$271,000. The case is a peculiar one and worth comprehending, and they ask that the circumstances surrounding it may have a candid and unprejudiced consideration. To this they are entitled, not only

in common justice, but because of the commercial reputation and character which have always belonged to their house.

There are two questions involved: first, Was there any intentional fraud on the part of Phelps, Dodge & Co.? and, second, Is there anything in the wording and possible construction of the Tariff laws which might lead them into error and unintentional violation of the law? If the latter shall prove to be the case it follows, of course, that the house must be acquitted of the charge contained in the former.

That difficulties may arise in complying with the law in the making of invoices seems plain enough. Thus, the invoice must declare the actual cost of the goods exported, though the duty assessed upon them is according to their actual market value at the time and place of shipment. But the certificate of the consul at the port of shipment is to the effect that he believes the declaration of the shipper, and that the invoice also gives the actual market value of the goods, although the merchant is required to give the cost, which may be a very different thing from the value to which the consul certifies! That mistakes should arise under this stupid complication is not singular. It is quite possible that the merchant, who is receiving goods manufactured on a long-standing contract, depending on the changing cost from time to time of the raw material, may not know the actual cost of the manufactured article, and honestly estimates it, therefore, with the assent of the consul, at the market value, which is the thing to which the consul is required to certify. That such a system opens the way to fraud seems plain enough; but that it may also give rise to mistakes is equally plain, even where there is the best intention to comply with the law.

The importations of Phelps, Dodge & Co. during the five years over which it is alleged their frauds extended, amounted to about forty millions of dollars. It sometimes happened that their invoices included articles—tin-plate—of an exceptional character in size and shape, made on long-existing contracts, the actual cost of which might not be known to the Liverpool house, but which must be invoiced and shipped immediately on their receipt from the manufacturers. The late consul at Liverpool, Mr. Dudley, testifies that this house was always more than usually “solicitous and scrupulous” in its disposition to comply with the laws; that the senior member of the firm often consulted with him as to the prices or values to be stated in the invoices; that exporters were often at a loss to know what valuation should be put upon goods made by running contracts; and that Phelps, James & Co., of Liverpool, always had such contracts.

In cases where there was doubt as to the actual cost of the goods, the habit of the Liverpool house was, therefore, to invoice at the market value of tin plate, that is, the value on which duties are calculated, and we are assured in the statement now given to the public that this valuation was more often over than under actual cost, so that the duties paid have been, on the whole, in favor of and not against the government. The actual loss to the revenue, it is stated, for the whole five years, and on the whole importation of forty millions of dollars, is only from two to four thousand dollars, while the excess of duty paid on over-valuation is a much larger sum.

It so happened, however, that where shipments were made of these goods of doubtful cost, a memorandum or manufacturer's bill accompanied or followed the invoices to show that they were remnants of old contracts. It would unquestionably have been better if the goods had been invoiced at the assumed cost of these memoranda or bills, but as they were not considered as showing the actual cost, the other course was pursued, as we have just shown, in invoicing, with the consul's assent, their supposed market value. No doubt it was a mistake to thus venture to attempt to comply with the spirit of the law by disregarding the technicality of the letter, however absurd. But as it was a mistake made in good faith, and with the purpose of scrupulous obedience to the law, it should not be assumed to be of fraudulent intent. It is impossible to believe it to be so when not only was nothing to be made by it, but the system was actually a losing one.

It was not only a losing one, but it put Phelps, Dodge & Co. into the power of any one who could show it to be constructive fraud under the unjust and oppressive laws made for the benefit of spics and informers. The memoranda which the house thought were of no value, so far as the Custom House was concerned, were stolen by a dishonest and discarded clerk and made the basis of a charge of cheating the government by false invoices for a period of five years. These memoranda were accepted by the Treasury Department as duplicate invoices, although they referred to single items among many, and according to the law, the whole amount of the invoices in which such items appeared, making a total of a million of dollars, was forfeited.

Now, if there is any justice or reason in such a law, Messrs. Phelps, Dodge & Co. should have been made to pay the whole sum. But as there was evidently no intention of fraud—and on this point the testimony of Judge Davis, the late District Attorney, is conclusive—a compromise was permitted. Had the Treasury

Department not agreed with Judge Davis it could not have honorably consented to any such arrangement, for that would have been to compound a felony. There was then really no crime that called for the enforcement of the law, and the loss of the government, even if it had gained nothing by over-valuation under the system, was trifling. But although a million of dollars was not exacted, it was necessary to squeeze out of the unfortunate merchants enough to satisfy the informer and the half-dozen government officers, to whom whatever was extorted—the government itself getting little or nothing—was to go. Messrs. Phelps, Dodge & Co. were therefore, mulcted in the sum of the value of the goods invoiced below cost, amounting to \$271,000, and of this sum the discarded clerk and spy received \$60,000, and the larger part of the remainder was divided among those federal officers whose interest it is to insist upon the enforcement of a penalty—not on the government's, but on their own behalf. Of course, the compromise is really theirs; the Treasury Department must submit to their dictation, and the merchant, if he has committed, however innocently, any technical infringement of the law, must accept such mercy as he can get.

Such are the results of our Revenue laws. By their blind stupidity, an old commercial house of the highest standing is inveigled into a blunder of three or four thousand dollars, in importations amounting to forty millions during period of five years, and is compelled to save itself the loss of a million by the payment of \$271,000 for the benefit of an informer and several government officers. The tariff has already driven our commerce from the seas; it is in a fair way of making it impossible for an honest man to engage in any trade where he is at the mercy of laws which pretend to regulate the duties on importations. The possible pecuniary loss and the sacrifice of reputation to honorable men, under regulations which it is exceedingly difficult to understand and almost impossible to obey, are so great that the chances are that trade will at length fall into the hands of unscrupulous men who are willing to take the risk because they have no characters to lose, and who will take good care never to have any pecuniary responsibility.

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[From the N. Y. EVENING POST, April 18, 1873.]

#### OBLIQUITIES OF THE TARIFF.

Every merchant of this city, we presume, is satisfied that the statement made two or three days ago by Messrs. Phelps, Dodge & Co. is not only a complete answer to the charge of fraud brought against them, but that their case

is one of peculiar hardship. The difference between the amount of duties they ought to have paid and that they did pay was not more than four thousand dollars in a period of five years, while to offset this there had been an actual payment to the government of a larger sum in duties from an over-valuation in the invoices of the goods in question. In equity they not only owed the government nothing, but the government was strictly in their debt. Why then, is it asked, should they have submitted to be mulcted in so large a sum as \$271,000?

The answer is obvious if the question is asked seriously: Because, according to the letter of the law, they were liable not only to the value of the particular goods which had been erroneously invoiced, but to the whole amount of the invoices in which the items occurred, and had the law been strictly enforced they might have been compelled to pay a million of dollars. Rather, therefore, than to trust to the uncertainty of a lawsuit where it was doubtful if the equity of the case would be permitted to rule in their favor; rather than remain for an indefinite period under the stigma of a charge of intentional fraud; and rather than submit to the inconvenience of being deprived, so long as the suit continued, of their books and papers, they accepted a compromise which, though a costly settlement, enabled them at once to make an appeal to the sense of justice in the public, and leave their commercial reputation without a blemish. That reputation they valued more than they did a quarter of a million of dollars, and fortunately they are able to pay the price.

Merchants, better than any other class of the community, know the intricacy and uncertainty of the laws under which spies and informers are enabled to work such wrong as this, both pecuniarily and morally, upon persons who are guiltless of any intentional fraud. The acts regulating the tariff upon importations are of many dates within a period of half a century and more, and they were framed, in many instances, perhaps in almost all, by men innocent of any knowledge of the subject about which they undertook to legislate. To put a duty of ten per cent. upon flaxseed and admit linseed free, as was done by one Congress, is probably by no means a solitary instance of similar blunders; and practical men are often called upon to deal with cases where it is quite as difficult to reconcile the fact with the law.

The particular case of Phelps, Dodge & Co., we are confident, is a much more common one than is generally supposed. \* \* \* It is for such cases as these that spies and informers, prompted by the tariff laws, are continually on

the search and on which they fatten. A merchant, however scrupulous he may be, and however desirous he may be to comply with the very letter of the act, may come to grief by an erroneous interpretation of the law as to cost and market values, or by an interpretation which should bring him into conflict with laws which may be twisted into having more than one meaning. He knows that he is dogged by men, even if they are not of his own counting-house, who are experts in detecting technical violations of the tariff regulations, and who will prove him to have been a rogue in spite of the best intentions. If he is a timid man he may submit to the exaction of blackmail; if the case is one difficult of explanation, he pays any sum demanded rather than suffer an exposure which may damage his reputation; at best, however disposed to take his stand upon an unblemished character and his rights, he may, by the technicalities of a law, which are a trap alike to the unwary and the careful, be compelled to make the best terms he can with those into whose power he has unhappily fallen. The inevitable result must be, in the long run, to drive honorable men out of business, who will not take such chances of ruin both in reputation and purse, and put it into the hands of unscrupulous agents of foreign houses, who will keep no books and cultivate short memoranda.

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[*From the N. Y. EVENING POST, April 21, 1873.*]

#### WHAT SHALL WE DO ABOUT IT?

The acts regulating the imposition of duties upon imports are scattered through the statute books for nearly three-quarters of a century, and those most familiar with them assert that so intricate and sometimes contradictory are they, that it is not only difficult to reconcile, but not easy to comprehend them. \* \* \* The evil is become so manifest in the wrong which a prominent commercial house has been made to suffer, that we hope men of both parties will give to the subject the consideration it deserves. We do not believe that any candid man can doubt that the statement of Phelps, Dodge & Co. is strictly true—that there was not on their part the slightest intention to defraud the government, and that though technically in fault in the method they adopted to invoice certain goods, they adopted that method in the belief that they were thereby obeying the spirit of the law in cases where they could not keep to the letter. Practically the method was so far from defrauding the government that the cases wherein the goods were at an over-valuation exceeded those wherein they were at an under-valuation, so that in equity

the government was in debt to them for an excess of duties paid, rather than they in debt to the government for a deficiency. Had the transaction been one between two merchants, three or four thousand dollars would have settled the difference. But as there was a technical evasion of the law the house was compelled to pay \$271,000.

We hold such a result to be simply an abuse of the law, or, to speak strictly, an abuse which the law permits. Mr. Boutwell's explanation, so far from putting any better aspect upon the question for the government, makes it worse, and is only a new illustration of how the law is used as an instrument of torture. If innocence of intention was worthy of weight, then the Secretary of the Treasury should, in a decent regard for justice, have simply required Phelps, Dodge & Co. to pay to the government only the actual deficiency of duties charged against them. To compel them to pay the penalty which the greedy expectants were waiting here to divide, while the innocence of the accused was acknowledged, was too great an outrage to be ventured upon. The way was smooth enough if a confession could be extorted. A threat of a lawsuit, with all its certain vexations and expenses, and the possible verdict against the house of an enforced payment of a million of dollars, with a stigma of guilt affixed by a legal decision, was held over them on the one hand; on the other was an immediate escape from the difficulty by the payment of a much smaller sum than the law might enforce, on the condition of acknowledging that the fault charged had been committed. Technically, according to the official construction of the law and the official assumption that certain memoranda were duplicate invoices, there had been a breach of the law. They could not deny constructive fraud, but whether they were wise to acknowledge this without insisting at the same time upon innocence of intention, that they might escape the heavier penalty, is a question about which men will differ. But that they were put in so tight a place by the Department, only shows the tremendous pressure that can be brought upon a merchant who falls into any of the numberless traps that the law lays for him.

The evil is that the law may be so easily misunderstood on the one hand, and admits of such enormous abuses on the other. We cited a day or two ago a case where, had it fallen into the hands of an informer, or Treasury agent, a forced construction of the law might have mulcted the merchant in a penalty of the whole amount of the invoice. The goods were deliverable on contract, and were invoiced at cost. But, according to the law, they were dutiable at the market price. Market price is

the price at which goods can be bought. Before this contract expired, the price at which these goods could have been bought under a fresh order had enhanced. When the contract was about to expire and the merchant ordered more goods, he was told that he could have no more at that rate as the cost of manufacturing them had increased. He had been innocently receiving goods for some time at less than their market value, and paying duty accordingly. Does anybody suppose that he would have been let up by a government detective on the plea of non-intention?

We have no doubt there are plenty of such cases in the knowledge of importers. Another of a similar sort has been told us within a day or two. A merchant ordered of a manufacturer in England all that he could make of a certain class of goods—made by nobody else for the time being—for a year. He invoiced them at cost, and there were no others in market to fix any other price upon them. It happened that in a railroad accident some of these goods were damaged and afterward sold at auction. They brought a much higher than the contract price—as would probably have been the fact with the goods in the other case referred to under similar circumstances—thus fixing a market value above cost price. No detective or treasury agent happened to learn the fact, though the merchant was in great trepidation lest one should do so, and bring a charge against him of undervaluing his importations. In both these cases the merchants were perfectly innocent of any intention of fraud, because they were not aware of any difference between the cost price and market value of their goods. But in both cases spies and detectives would have found enough to

base a charge against them of defrauding the revenue.

We repeat what we have said before—that the law is capable of these abuses; and the conspicuous case of Phelps, Dodge & Co. should be made use of for a positive and public demonstration against them. The merchants are at the mercy of informers and detectives, and the laws are so intricate and capable of such construction, that the most innocent and most honorable men may become the victims of private or public and legal extortion. The timid may submit to be blackmailed; those of more firmness may consent to official compromises, which, however, are sure to be of such a character as to be what is officially called “a good thing” for the class of revenue officers for whose enrichment the law seems designed.

We know of no subject which just now better demands the attention of the Chamber of Commerce. What the merchants cannot and dare not do individually they may do as a body. We doubt if Cooper Institute would be large enough to hold a meeting called to consider a revision of the laws relating to the tariff, and such a meeting would show a public feeling on this subject and bring out a mass of evidence which would be the first step and a long one toward reform. One of the most eminent lawyers of this city, and a hearty supporter of the Republican party, has said that no ministry in England would remain in office a week that undertook to withstand a parliamentary inquiry in such a case as this of Phelps, Dodge & Company. We cannot turn out a ministry, but public opinion among us can compel the dominant party in an administration to correct oppressive and obnoxious laws.

## A COMPLETE ANALYSIS OF THE CASE.

*by D. A. Mull*

[From THE NATION, N. Y., May 1, 1873.]

### THE EXTRAORDINARY ELEMENT IN THE CASE OF PHELPS, DODGE & CO.

The case of Phelps, Dodge & Co. is certainly destined to become a *cause célèbre* in our mercantile history; and, if we are not much mistaken, will, by awakening public attention to the character of the laws and the fiscal policy under which the business of the country is transacted, exert an important influence also upon our political future. The statement of their difficulties with the Government,

which the firm has recently published, is a document so remarkable, that were it not for the accompanying confirmatory letters of the late United States District Attorney, Hon. Noah Davis, and the Special Treasury Agent, Mr. Jayne, the alleged facts would seem almost incredible; and yet the concurrent circumstances of the case which have not been publicly related, and the deductions which a review of the whole affair legitimately warrants are, if anything, still more extraordinary.

During the past summer a contract was being negotiated by the house of Phelps, Dodge & Co. with certain manufacturers in

Europe for the purchase of the entire annual product of a specialty of metal fabrication ; and as the project, from the amount of capital involved, was one of no little risk and of great importance, the entire discussion and correspondence relative to it were made in the highest degree confidential, and a member of the firm ultimately sent abroad to perfect and complete the arrangements. But the steamer which bore him had hardly taken its departure when the firm was waited upon by a competitor in business, who, after making known his acquaintance with the proposed contract and its conditions, as well as the sailing of the partner referred to, preferred a demand for participation for himself and others in the enterprise, accompanying it at the same time with a threat that unless the terms were accepted " he would burst the whole business." It is only necessary to say that the demand was at once resented, and its author treated as he deserved. But the revelation that what were supposed to be business secrets in the firm had become known, and the further fact that an attempt was subsequently made in Europe to make good the threat uttered, led to an investigation, when it was ascertained that for some time previous it had been the practice of several *reputed* respectable New York metal-brokers and merchants to visit the store of Phelps, Dodge & Co., secretly and at night, for the purpose of inspecting their letter-books and invoices—admission being given them by dishonest clerks and watchmen, who had been bribed to betray their employers' interests.

An arrest and prosecution of at least one of the principals concerned in this disgraceful transaction immediately followed; but as it was shown that admission to the store was allowed by the agents of the firm, and as it could not be proved that any article had been feloniously removed from the premises, no specific criminal offence, for which punishment might be awarded, could be established. But in the course of the trial it came to light that among the employees who had been guilty, from mercenary motives, of betraying the trust confided to them, was a clerk who, to the sin of dishonesty, added the deeper one of ingratitude. This man, a creole Frenchman or Spaniard, of supposed West India origin, had been given employment in the outset, when not needed, by a member of the firm, simply out of compassion for his utter poverty and friendlessness ; and had subsequently been educated, promoted on a liberal salary to the position of assistant invoice clerk, and even retained in position when ill-health had almost entirely incapacitated him for any useful and efficient service. This rascal, for such is the only proper term that can be applied to him—

who, by the way, it should be stated, had gained admission to the store at night under the plea of serving his employers by bringing up his arrears of copying—foreseeing as the result of the legal investigation that his own dismissal from employment would be one certain issue, took immediate steps to secure himself against any contingent detriment by assuming the rôle of an informer ; and having, in his capacity as assistant clerk, become acquainted with certain invoice irregularities, in place, as was his duty, of informing his employers, he stole the documents in question, and put himself in communication with the Custom House officials.

As to the manner in which he operated to make his stolen capital available, it is sufficient to say that men of high standing in the legal profession were only too ready to engage, for a share in the spoils, in the work of hunting down an old and leading firm of New York merchants, and by such the case was worked up and placed in the hands of the Custom House detectives.

Now, whether the firm of Phelps, Dodge & Co., were or were not engaged in an attempt to defraud the revenue, is a question which we do not here propose to discuss. But we simply draw a picture of the events that preceded their accusation and arraignment, and ask our readers and the public to take a good look at it, and then ask themselves how long a community which tolerates such a dry-rot of all manliness can legitimately profess to be moral or even civilized ? Or, in the face of such precedents, what probability is there of New York City speedily becoming the commercial centre of the world's exchanges, the continued recipient of foreign capital, or an entrepôt of the commerce of all nations ?

But if the relation of private parties to this case has been most extraordinary, the position of the Government, both in respect to the law and its administration, in this same matter, has been no less singular. And in saying this we by no means intend to reflect on the course of the minor officers of the revenue, who play the part of prosecutors and detectives. The law under which they act is permissive, if not mandatory ; and when the end in view is pecuniary gain, human nature is pretty certain to run in similar channels, whether it be enthroned in the Custom House, presides over a Chatham street "loan office," or rides on a red cart in the person of a Yankee tin-peddler. But when we come to deal with Washington and the higher officials who preside over the destinies of the nation, we have a right to expect something better. We have a right to expect that they, at least, shall fully recognize the principle that the primary object of all gov-

ernment *is to remove obstructions*; and of a free government, to promote the interests of the people and prevent wrong and injustice. But axiomatic as are these principles, they are the very ones which appear to have obtained the least recognition in the determination and administration of our recent revenue policy; and in the place of them we have had interference and obstruction as the characteristic feature of Congressional legislation; and in the Departments, a proclamation by works that Government exists primarily for itself, and that its interests *per se* are first, and those of the industry, trade, and commerce of the country, secondary and subordinate, or, as the late Secretary of the Treasury substantially expressed it, in an official conversation during the past winter, "that he regarded the interests of the Government and the interests of the merchants as diametrically opposite."

In the light of such precedents and sentiments, and as bearing upon the industry, commerce, and morality of the country, it is interesting next to trace the influence and action of the Government in the Phelps, Dodge & Co. difficulty, from its remote inception to its full fruition and culmination. In the first place, the attempt to collect a revenue from duties on tin and tin plate (the articles in respect to which undervaluation is alleged) is something economically indefensible. Neither of these commodities is produced in the United States, and no infant manufacture, or citizen in such a state of pauperism as warrants him in asking the Government to impose a tax for his benefit, seeks or demands it. But, at the same time, tin and tin plates are so indispensable in our social economy, and enter into so many forms of domestic industry, that it is not too much to say that, for every dollar tax by which their cost is primarily enhanced by the Government, the consumer pays, in the way of profits, interest, and commission on the successive sales and transformations that precede their final use, at least from fifty to seventy-five cents additional.

The tax, then, in place of being specific, or by the pound, as it might be—thus obviating any possibility of fraud on the part of the importer—is made *ad valorem*; and when Commissioner Wells, some years since, with the general concurrence of importers and appraisers, and with a view of simplifying the law and its administration, made a special recommendation to Congress in favor of converting the existing *ad valorem* on tin plates into an equivalent *specific*, the recommendation received no more attention than if he had proposed some standard by which the length of dogs' tails should be equalized and adjusted. And the reason, furthermore, why specific

duties, as a preventive against undervaluations, have not been more generally substituted in the frequent readjustments of our tariff laws, is undoubtedly to be found in the circumstance that the essence of protection is obstruction, and every protectionist, when called upon to legislate, instinctively feels, even if he cannot give a reason, that the removal of any obstruction in the way of importations is in itself a movement in the direction of greater freedom in exchanges; and that, in comparison with such a result, temptations, snarcs, frauds, and national demoralization are evils of minor consideration.

But although the substitution of specific for *ad valorem* duties would effectually prevent frauds in importation, except through the direct complicity of the agents whom the Government appoints to enumerate, weigh, and measure, it would still seem as if the law in other respects had been purposely disregarded to make the business of importing as difficult and personally hazardous as possible. Thus, for example, instead of one concise code, we have statute running back to 1799 piled upon statute, until the law has become so complicated that it is within bounds to say that there are not ten men to-day, in all the United States, who have any clear comprehension of all its requirements, provisions, limitations, and interpretations. Again, the law requires invoices, oaths, certificates, and declarations, not once, but in triplicate, of shippers, consuls, owners, and consignees, in respect to the most minute particulars of cost, market value, freights, charges and commissions; and yet, in actual practice, and when it is to the advantage of the Government to do so, all these forms may be set aside, and the duties assessed on the judgment of certain persons, supposed to be competent, sitting as appraisers. And when these appraisers, whose functions and office would seem to be judicial, have once given their judgment, and the same has been accepted alike by the Government and the merchant, the duties paid, and the merchandise delivered, sold, and consumed, it is held to be right, as it is the practice of the Government, to go back at any time within a period of five years and reopen the whole matter for further adjudication; and, as in the case of Phelps, Dodge & Co., exact fines, amounting to confiscation, for technical infractions of the law, which, by the admission of the Government agents themselves, have resulted in practically no loss to the revenue. And as illustrating still further the arbitrary character of the law regulating foreign commerce, it may be stated, that even in cases where the duty is so much per pound, per yard, or per dozen, and where value is of no consequence, if it so happens that the invoice does not cor-

rectly state the value, the goods are liable to confiscation, and in at least one instance during the past year, of this exact character, have, in fact, been seized for forfeiture, and the consignee threatened with imprisonment. And in the case of goods imported, where the duty is *ad valorem*, but the value indefinite or difficult of determination, and when for such very reasons—as in a recent importation of South African diamonds—the goods are forwarded to the care of the Collector for appraisement, and not to the owner or consignee, the absence of an invoice, giving details which cannot be known to any one, has not only been held to render the importation liable to forfeiture, but on such flimsy basis proceedings for forfeiture have actually been instituted.

But the law, harsh, arbitrary, and barbarous as it is, is not wholly unmerciful, inasmuch as it allows the head of the Treasury Department “to mitigate or remit any penalty or forfeiture,” when the same, “in his opinion, shall have been incurred without any intention of fraud.” Now, in the case of Phelps, Dodge & Co., an infraction of the law was, without reserve, admitted, and, as Mr. Boutwell has stated, the practice of the Treasury undoubtedly warranted the Secretary in assuming an admission of illegal action, and an offer to settle, as equivalent to a confession of anything which the form of procedure might stipulate; but the fact, nevertheless, remains, that we have the assertion of the firm and the certificate of the District Attorney, *first*, that the offence was not intentional, and, *second*, that the total loss to the revenue during an extended period, and as the result of Custom House transactions and payments representing millions, was a sum comparatively insignificant. Under such circumstances it would seem to have been the part of our great Government, whose revenue laws are acknowledged to be a bundle of inconsistencies, to have fallen back on the old maxim, “*De minimis non curat lex* ;” and even on the assumption that the utmost that could be charged was true, to have dealt tenderly with the reputation of one of the representative and most enterprising commercial firms of the country, the members of which, when it was a question whether the Government itself would have a continuance, had contributed of their own number to the ranks of the army, and had given of their substance to the cause of the country what in old time would have sufficed for a “king’s ransom.”

But what did our great model and enlightened Government, acting through its official representatives, actually do? It exacted a penalty of \$271,023.17 for a detriment to the revenue which it has been certified was not in excess of \$1,664, and which the Treasury, by

compromising, acknowledged to have been unaccompanied by fraudulent intent; and exacted it furthermore with the full knowledge that the diversion of one-fourth of the whole amount paid into the pockets of a scoundrel of a clerk, who for lucre had sold out his employers, would in itself constitute such a premium and incentive to rascality as to substitute an atmosphere of suspicion and concealment, in place of confidence and good feeling, throughout the entire mercantile community. There is no necessity, in forming an opinion about this part of Phelps, Dodge & Co.’s case, to consult Brightley’s Digest, or to trouble our heads about actual costs, market values, or what has or has not been the practice of the Treasury. If the facts in respect to the inception of the difficulty, the procurement of evidence, the absence of intent, the amount of loss to the revenue, the penalty exacted, and the disposition of the penalty, are as represented—and it is difficult to see how the above statements can be questioned—the action of the Government has been simply infamous, and in almost any other constitutional country would have not only driven the ministry from power, but would have compelled national atonement not only for the money paid but for damages incurred to the uttermost farthing. Legislation, we all know, has driven our commerce from the seas; but administration seems now to supplement legislation by driving American merchants out of existence, and substituting in their place men of no nationality, who will say to the Government as their prototype Shylock said to his persecutors: “The villainy you teach me I will execute, and it shall go hard but I will better the instruction.”

#### A PRACTICAL CONFISCATION.

[From THE N. Y. EVENING EXPRESS, April 16, 1873.]

We publish the very elaborate statement of Phelps, Dodge & Co., in another column, with the important letters appended of B. G. Jayne, the United States Special Treasury Agent, the vindication of the late and long United States Consul, Thomas H. Dudley, as to the practices of the firm in London, and of United States Judge Noah Davis, each of whom vindicate the New York firm of anything like intentional fraud. Messrs. Phelps, Dodge & Co. give their own concise reasons relative to the revenue dispute, and show why they consented, in the sum of \$271,000, to get rid of a claim which in equity amounted to but a few hundred. On the subject of invoices they have shown that owing to certain irregularities abroad, of which

they had no knowledge, the Government had received far more in excess or overcharge of duties than it had lost from any advantages to the firm. Indeed, the act of the Government proved to be a practical confiscation, and many friends of the firm, and some not friendly, blame the parties for not vindicating their case in court, rather than submit to the extortions of the Government; but the reasons given for this course are, first, the proposal of the firm to submit their case to the decision of the Government, and, secondly, the uniform desire and practice of the firm to avoid litigation. This case is not peculiar, as it shows wherein the letter of the law may become positive injustice to persons accused, but all these points are stated with so much clearness and frankness that we leave them to the reader, and in the full conviction, after perusal, both that no fraud was intended, and, secondly, that the exactions of the Government, for exposures, first inspired by informers and United States agents, were altogether beyond the offence committed. The good intentions and fair mercantile credit of a long life ought to outweigh the criticisms and injustice caused by a failure of agents to do their duty. Where the firm of Phelps, Dodge & Co. in a period of five years paid to the Government many millions in customs, the loss to the Government from the irregularity of their agents was less than \$3,000, and this from those who gave yearly many times this sum in charity.

## HOW IT IS DONE.

[From THE N. Y. EVENING EXPRESS, April 16, 1873.]

The affidavit of "information and belief," without the slightest hint or statement of the grounds or facts upon which that "information and belief" is founded—upon which, if perjury could be conclusively proved, an indictment would lie—of the lowest and most worthless culprit unhung or out of jail, without character or faith on which an oath is founded, who will sell himself for a pittance, upon such complex questions, about which the most intelligent experts of the day may honestly differ in opinion of valuation of from five to ten per cent., will outweigh in the opinion of the Attorney of the Government, who gets two per cent. on all confiscations; in the opinion of the Collector, Naval Officer and Surveyor, who get one-quarter, (while one-fourth goes to induce informers to disregard truth, without thought of consequence) a life-time of honesty, character unspotted, a world-wide reputation for honor and integrity, a financial responsibility of almost inestimable value, both in America

and Europe, a Christian character to lose, a cherished family name to protect, an honorable citizenship and influence to be obtained and retained only by a life-time of honest and honorable dealings. \* \* \*

If the merchant feels it to be his duty to defend himself, it is at a great expense and upon an extremely doubtful financial result. It is delayed until the delay is equivalent to a denial of justice.

If, by reason of some technical misunderstanding of the value of the goods, an undervaluation is made out — however slight, though an eighth of one per cent. — technically the merchant may be charged by the court as guilty, and mulcted in heavy damages for costs, besides a confiscation of all the goods, though of the value of millions. If the "job" is made out of "whole cloth" by perjury, yet if the court certifies to probable cause, the importer is without redress for damages sustained; and therefore, whichever way the case ends, the merchant must suffer irreparable loss in his own good name both in America and Europe. Rival houses will easily circulate the prejudiced report, newspapers will spread it broadcast, and the only remedy seems to be to "deliver up" what is asked, regardless of law, justice, or decency.

If the Government officials did not, with their informer, share in the ill-gotten gains, doubtless a "probable case" would be required to be made out, before the Collector would allow the honorable name of responsible importing houses to be blasted by a publication of slanderous statements of alleged guilt of fraud upon the revenue of the Government. As it is, the more unspotted the credit of the importing house, the greater the facility to blacken them through "an informer," knowing full well that such a house will have a lifetime reputation to lose, a world-wide financial credit at stake, an honorable family to defend.

Is it not time the finger of scorn was pointed to all those who indirectly aid and abet the oppressive breaking down of a well-known mercantile reputation and financial credit so often assailed at the instance of officials for gain, and that the power of the press of the nation was also brought to bear to break down this oppression upon honorable merchants under the false name of law?

[From the same Newspaper.]

While we have no sympathy for Phelps, Dodge & Co., and shall not soon forget that one of our editors was put out of Congress by the senior of the firm, in as partisan and

unjust a decision as ever was made by party men in party times, we nevertheless like to see fair play and plain justice. But for the private plunder in this case, we believe that, under the old law of Congress and the equities of the case, Phelps, Dodge & Co. would have escaped by paying \$2,500 in deficient duties. Every merchant is liable to this injustice, and may therefore fairly protest against it.

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#### AMPLE EXONERATION.

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[From THE NEW YORK COMMERCIAL ADVERTISER,  
April 16, 1873.]

#### PHELPS, DODGE & CO.

A long explanation by this firm is published on our first page. They take pains to show how the errors charged against them were possible, and claim that they resulted from inadvertence, and from the intricacies of the revenue laws. Errors have crept into invoices received from many different makers, and disagreements between the Liverpool house and the makers in respect to the qualities or prices to be paid for particular goods have been unavoidable. The firm show that the actual loss to the Government on transactions running over many years, and involving many millions of dollars, was not more than two or three thousand dollars. Ex-District Attorney Davis and Special Agent Jayne, who conducted the examination and prosecution, certify to this fact, and Judge Davis remarks that Phelps, Dodge & Co. manifested a prompt and earnest desire to court and aid investigation, to correct any error, and right every wrong that might appear to have been done to the Government or its revenues. The document in question explains the reason for paying the Government the demand the laws allowed to be made. It furnishes an ample exoneration of this long established house, whose integrity is and has been unquestioned. The possibility of wrong and injustice under our revenue laws is also shown—by no means a new fact. Its exposition now, however, may perhaps serve to call attention to a system under which such things are possible, and suggest a remedy or a preventive.

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#### UNSPOTTED BY THE ATTACK.

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[From THE NEW YORK GRAPHIC, April 16, 1873.]

A long statement has been published by Phelps, Dodge & Co., which fully clears that old and honored house from all suspicion of

attempting to defraud the revenue. During the last five years the firm have imported over \$40,000,000 worth of metal, on which they paid duties to the amount of \$8,000,000. The total of irregularities charged against them during this time was only \$2,000, yet, under the construction of the law made by our revenue officers, they were subject to a fine of one million dollars. Sooner than have their books seized and held by Government, and their business broken up, Phelps, Dodge & Co. compromised on \$271,000. Then they waited for time to do them justice, and prepared the exonerating statement which they now publish, and which is so strong as to call forth the opinion from Judge Noah Davis that it is a proof of their "entire innocence, in the whole business, of any attempts at fraud." The fine has been paid. Part of it has been handed to the informer, an ingrate clerk in the employ of the firm; a moiety has gone into the pockets of the Collector, Surveyor, and Naval Officer of the Port, and the Government has received only a portion of it. Unfortunately our revenue laws are so crude and old-fashioned that the Government was readily made a party to a prosecution that from first to last was a blackmailing operation. But this is not the only lesson the affair impresses. It reflects no credit on American journalism to find editors and newspapers howling down a house that has been an honor to the city for seventy years, on the strength of a spy's oath and the stories of revenue officials eager for a division of the spoils. Just men will always wait to hear the other side. They find their reward, as in this case, in the more patient investigation which leaves an old commercial house unspotted by the attack of the black-mailer.

[From THE N. Y. EVENING MAIL, April 17, 1873.]

#### A WELCOME VINDICATION.

It is with peculiar justice that the distinguished firm, of whose explanation of the question in dispute between themselves and the revenue authorities we gave a summary yesterday, complain of the treatment they have received from the public in this matter. The house of Phelps, Dodge & Co., by its long and honorable record and its high standing among the business community, not less than by the eminence of the individual members in "doing good among men," was entitled to the fullest confidence from the public at large. If there was to be any pre-judgment of a disputed matter, fair play demanded that the leaning should be in favor of so honorable a house. But coming as it did when the public

mind, stirred by the Credit Mobilier disclosures, was disposed to believe the worst of the best, the charge of Custom House irregularities was magnified at once—those who are always alert to catch and loud-mouthed to proclaim any imputation cast upon “Christian” business men, lending eager and efficient aid—into an absolute charge of little less than wholesale smuggling. The vindication which the firm make is thorough and satisfactory, and should put these careless slander mongers to the blush. We rejoice in it the more because it puts to confusion the dangerous sneer that honesty, that surest foundation of commercial as of individual or national success, is no longer to be found in our business circles. New York can point proudly to hundreds of shining examples to prove the contrary, and with the more confidence now that the innocence of Phelps, Dodge & Co. is so fully proven.

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We confess that we were at first thought inclined to blame the house for the seeming weakness of compromising with the government. But they have now cleared up this matter as well, and we are glad to congratulate the house and the commercial community in general upon their complete vindication. It would have been a blow to all New York commerce had the imputations upon one of its most honored leaders been sustained; it is an honor to it that they have been so thoroughly dispelled.

[*From THE BROOKLYN EAGLE, April 16, 1873.*]

Whatever may be the technical interpretation of the revenue law it is entirely obvious from the experience of Phelps, Dodge & Co., that the Government has coolly perpetrated a robbery of the firm, if the matter was to be tried on its merits in equity. It is utterly absurd to suppose that a large house, whose business annually covers millions of dollars, would stoop to such paltry dealing as to pick up a five dollar note from a \$1,400 transaction, and other similar business exploits. If this firm, the very friction of whose business yields an almost constant rivulet of uncounted cash to the revenue bureau, may be snapped up by some spy who watches eagerly for some obstruction that will make it appear that the surplus given away is for a moment receding toward the firm, what security is there for other business houses? The Government's system of enormous “divides” and fees to informers and their assistants and its remorseless interpretation of law as against the simplest forms of justice is a national shame. It is an open bid for blackmailing, dishonesty and rascality of every degree.

[*From the same Newspaper.*]

It was a case of circumstantial evidence against them. Certain memoranda—used for private and entirely honorable purposes, but at the same time technically exhibiting a petty violation of the strict letter of the revenue law, oftener showing a driblet of irregularity in favor of the Government than otherwise—were cunningly brought to bear against them by a clerk they had well trained in business and with a malice that was sleepless. He sought to destroy at one blow their reputation for commercial integrity and enrich himself with the fruits of their intended dishonor. He has miserably failed in the one, and in the other has earned an infamy from which he cannot recover.

[*From the same, April 28, 1873.*]

#### REVENUE SHAVING.

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The result to importers is one of great perplexity and embarrassment in those cases of frequent occurrence in which they are unable at the time of shipment, and making out their invoices, to determine precisely what is the actual cost. If they should make a mistake they are guilty of an irregularity, which, as shown in the case of Phelps, Dodge & Co., subjects them to the penalty of forfeiture. The practice is a shaving practice upon its very face, besides putting importers in constant peril; and if it be the proper interpretation of the law, then it is legal shaving. Such a law ought to be repealed forthwith.

The government ought to decide whether it will take the cost value or the market value as its standard, and then adhere to the one it selects, at least in all cases to which it is applicable. This dodging between two values according as the one or the other is the highest, while perplexing to importers, is a system of revenue shaving. This is the proper name for the thing.

[*From THE BOSTON ADVERTISER, April 18, 1873.*]

We do not suppose that this result will permanently affect the high character which the house of Phelps, Dodge & Company has always borne. But there is a moral in it which it becomes our lawmakers to seriously consider. The situation under our customs detective system is practically thus: Any importing house may any day, upon false or garbled information, find itself visited by irresponsible persons, who may seize their books and papers, and fix damages at whatever sum they please. If the importer, in his indignation, resists, he

may find himself, after an expensive and vexatious suit, exactly where he was at first, minus his expenses, and he may be much worse off than this. If, to avoid all this, he settles for a round sum, he is placed by one half the community in the category of thieves, while the other half censure him for allowing himself to be bullied into a surrender. The detectives and other interested officers meanwhile range at will. If their forays are successful, they get a large part of the booty, and moreover an increase of importance and that keen sense of power which a subordinate feels in bringing a wealthy merchant to his knees. If the shot fails, the officer still has nothing to fear. He can hunt for other game. We are shocked at the state of society when the robber barons of the Rhine used to sally from their castles and carry off the trains of passing merchants; but with a slight difference of externals we fancy that in the nineteenth century the institution is not quite extinct.

[From THE NEW ORLEANS TIMES, April 25, 1873.]

#### EXTORTION UNDER THE TARIFF LAWS.

Messrs. Phelps, Dodge & Co., of New York, the largest metal importing firm in the country, have published a statement explaining the compromise which they recently made with the United States Treasury Department. The statement is admitted on all hands to be correct in all material particulars. It shows that within the past five years Messrs. Phelps, Dodge & Co. imported over \$40,000,000 worth of metal ware, on which they have paid over \$8,000,000 in duties; that the whole amount of irregularities charged against them did not exceed \$2,000; and that these occurred without any intention of fraudulent evasion of the law, but from the utter impossibility, under the complications and contradictions of the law itself, of avoiding occasional discrepancies.

And yet for the pitiful sum of \$2,000, alleged to be lost by the Government by reason of such inevitable discrepancies, the books and papers of these importers were seized, their business was interrupted, and they were proceeded against for the forfeiture of \$1,000,000 worth of goods, included in fifty invoices alleged to contain errors in a number of items to the value of 271,000. The last named sum was offered by the firm in settlement, and was accepted by the Treasury Department, which claims in so doing to have acted generously, inasmuch as it did not take a million by confiscation.

As their justification for not contending to

the extremity of litigation, the Messrs. Phelps, Dodge & Co. say :

If there are any who may be inclined to judge us harshly for such a decision, we would ask them to recall to mind the peculiar rigor of our present tariff law; the enormous confiscations which it is allowed to the Government to make under it; and furthermore, that during the whole continuance of the suit, our books and papers would be under the control of the authorities, and our business would be liable to be interrupted and our credit affected by rumors and misrepresentations which it would be exceedingly difficult, if not wholly impossible, to at once refute and answer.

Such revelations are a disgrace to the revenue system of the country.

[From THE LYCOMING (Williamsport, Pa.,) GAZETTE, April 21, 1873.]

In this complete vindication from the aspersions attempted to be cast upon their house, the firm has been greatly strengthened in the public estimation, and will not longer suffer at the hands of enemies who have been so completely disarmed as to be powerless to inflict the most trifling damage.

The firm of Phelps, Dodge & Co. has large interests in this city, and other portions of the State, and from this fact we take more pleasure in laying their very full and conclusive statement before our readers. When it is remembered that the house has been in existence for a long series of years, and always enjoyed a reputation for honesty and integrity that no one doubted for a moment, it were almost unnecessary to adduce any proof at this juncture to squelch the reports that have been put in circulation, as scarcely an individual could be found who fully believed them. In a business involving millions of dollars it is preposterous to suppose that such a firm would hazard its reputation, and the social standing of its individual members, by engaging in petty transactions to defraud the government; but when confronted by such charges, rather than rest under suspicion for a moment, the sum alleged to be due was promptly paid over. Very few firms of equal wealth and standing would have submitted to the demand for a moment, but resorting to law would have defended themselves in the courts. This firm, however fully conscious of its ability to show no intention of wrong, was prompt to yield to the government demands and vindicate itself afterwards. After a searching investigation it stands fully exonerated. An equal amount of honor on the side of the prosecution should prompt the immediate return of the money that has been unjustly confiscated.

[From THE DETROIT TRIBUNE, April 21, 1873.]

This statement shows a serious defect in our present laws for the protection of our customs revenue. The situation under the customs detective system, is substantially this: Any importing house may any day, upon false or garbled information, find itself visited by irresponsible persons, who may seize their books and papers and fix damages at whatever sum they please. If the importer in his indignation, resists, he may find himself, after an expensive and vexatious suit, exactly where he was at first, minus his expenses, and

he may be much worse off than this. If, to avoid all this, he settles for a round sum, he is placed by one-half the community in the category of thieves, while the other half censure him for allowing himself to be bullied into a surrender. The detectives and other interested officers meanwhile have a free field. Even if their charges are ungrounded, they have nothing to fear, and only wait with sharpened appetite, for the next victim. The whole importing business of the country is thus placed at the mercy of a gang of detectives, always selfish and frequently utterly unscrupulous.

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## COMMENTS OF THE TRADE AND FINANCIAL PRESS.

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[From THE SHIPPING AND COMMERCIAL LIST.]

### VINDICATION OF PHELPS, DODGE & CO.

The statement of Messrs. Phelps, Dodge & Co., which we herewith print, must be admitted by every fair-minded reader to be a complete vindication of any intent on their part to defraud the Government. It is made apparent that the actual loss to the revenue through their transactions with the Government, running through several years and involving forty millions, was not more than *two thousand dollars*, and that this insignificant loss resulted wholly through inadvertence and the intricacies of our revenue laws, which, comprising the iniquitous undervaluation and spy systems, stand as constant impediments to legitimate commerce. A perusal of their ingenuous statement carries with it the conviction that this old and honorable firm have been the victims of gross injustice, and the all but universal sentiment is that they ought not to have made a compromise. They, however, offer cogent reasons for having done so, and they emerge from the contest, as we never had a doubt they would, with an untarnished reputation. This vindication, while showing plainly enough that there should be a prompt amendment of statutes which harrass the legitimate mercantile interests, and subject them to the caprices and cupidity of informers, is also a fitting commentary upon the course of a portion of the partisan press, whose

editors accepting rumors as self-proven truths, and wholly ignoring the old legal maxim that one accused is to be held innocent until proven guilty, pronounced the firm culpable and amenable to severe punishment. The upshot of the matter is a severe rebuke to a class of people who are prone to lend a willing ear when calumny finds a shining mark.

[From THE U. S. MERCANTILE AND SHIPPING ADVERTISER, April 25, 1873.]

### THE CASE OF PHELPS, DODGE & CO.

The house of Phelps, Dodge & Co. has so long been in New York a synonym for all that is honorable, straightforward and honest; has so long been an almost venerated name in this community throughout the United States; in fact, throughout the whole civilized world, held up to the rising generation as an example worthy of imitation; their character as men, as merchants, as Christians, has stood so high, that when the foul breath of slander tarnished for a brief period their fair fame by the aspersions that have so lately been cast upon them, and out of which they have emerged with so spotless a reputation, a feeling, a deep feeling of surprise and sorrow, pervaded the entire city. Men wondered and whispered, scarcely daring to speak the almost impossibility of such an occurrence. As time rolled on the thing took shape. It was said that this house, that had stood so high; this house that had withstood so

many revulsions—revulsions that had caused so many to totter and still more to fall—that this staunch old ship had at last been wrecked; had defrauded, systematically defrauded the United States Government. And how did the old house behave under these trying circumstances? How? Why just as might have been expected from the high-toned character of the men who composed the firm. They at once invited a most rigid examination of their books, their papers, and even their private memoranda. Not only so, but they gave their personal assistance to the parties deputed by government for that purpose. And the moment the technical (for the error was entirely technical) difference was made apparent to them, they at once, promptly and of their own accord, paid into the treasury every possible dollar that by any stretch of calculation could be claimed by Government. Had they been less sensitive, had they, instead of obeying the impulse of their high-strung sense of honor, allowed the case to be brought before the courts, no jury, no twelve men, would have decided against them. Having thoroughly examined the whole matter for our own satisfaction as well as from a sense of duty, to ascertain the real merits of the case, having read attentively the whole proceedings, and made the most liberal calculations, we cannot see how the Government could possibly have been entitled to a dollar. But give the United States the benefit of a doubt, and a very strong doubt at that, we cannot see how they could claim more than about ten thousand dollars. The fact is the importer is so hedged in by technicalities that he should have at hand on all occasions a skillful lawyer. We regret that the cloud should have arisen; but it has passed, and the bright sun of perfect confidence in the integrity of the house has cleared the atmosphere of any possible doubt. The occurrence has rallied around them hosts of friends of every grade, from the merchant to the laborer. Men who feel a just pride in the standing of such men and who feel a corresponding contempt for the cause of this temporary unpleasantness; the man who could so far forget his manhood as to vent his spite upon those who had nourished him; the man who in his own person has exemplified the truth of Æsop's fable of the viper warmed to life in the kind man's bosom. Fortunately all men are not black-hearted. Accidentally we met at a large establishment in the upper part of the city, where he is now employed as common working man, one who was formerly in

Phelps, Dodge & Co's establishment. In his hearing the name of the house was mentioned. It would have warmed the heart of each member of the firm to hear the honest, warm-hearted expressions of this humble laborer. It showed the inner working of the house; the little matters apparently insignificant in themselves, but after all the true test of character. "Ay," said this warm-hearted Irishman, "I was not worth my salt for over three months, and my wages went on; they never let me suffer;" and this, he said, was the practice of the house to all their employes, no matter what their grade. They practice what they preach. These remarks we have made from a sense of duty. We feel proud to think that the house—particularly the older members—shall have the gratification to know that the foul tongue of slander cannot blot out the work of a well-spent life, cannot mar the beautiful edifice so carefully reared; and we feel proud that we, as independent journalists, can contribute our share to replace them in their proud, well-earned position. Their immediate friends need no word of ours, but many an eye will scan these pages, with whom we hope this little tribute to sincere worth may have its effect. The character and standing of the house has so long been part and parcel of our city—has been so long a property in which we each owned a share that we could ill afford to lose it. We rejoice that they have shown themselves to be honest men—the noblest works of God.

[*From THE N. Y. COM. BULLETIN, April 16, 1873.*]

#### AN HONORABLE VINDICATION.

The explanation by the firm of Phelps, Dodge & Co., published in another part of to-day's Bulletin, relative to the charges of alleged undervaluation of invoices, will be read with interest by the public, and more especially by the mercantile community. This vindication from any willful intent to defraud the government is full and complete, a fact which gives this journal the more satisfaction, as it has from the first refused to join in the general and unfounded imputations against a firm of fifty years' honorable standing in this city. Character, even in these times of corruption, counts for something, and we believe that no fair-minded person, after an intelligent understanding of the facts, will hesitate to acknowledge that Phelps, Dodge & Co. stand exonerated from all intentional fraud.

Technically, no doubt, there was an infringement of the letter of the law, but this infringement was more the fault of the law itself than of the firm. Our tariff laws are so complicated and contradictory, and are so loaded down with vexatious Custom House regulations and Treasury decisions, that it is almost impossible to avoid some mistakes, and particularly so in the case of goods specially manufactured abroad by branches of American firms. The only mistake of Phelps, Dodge & Co. consisted in their not bringing their case before a jury of their countrymen. If this had been done, their innocence would have been fully established. But, jealous of their honor, the firm conceded everything that was technically advanced against them by interested informers, with a temporary loss of reputation that is now somewhat tardily but effectually restored by their straight and manly vindication.

[*From THE U. S. TRADE REPORTER, April 26, 1873.*]

#### VINDICATION OF MESSRS. PHELPS, DODGE & CO.

This eminent house have published within a few days past, a complete vindication of themselves from the charges heretofore made against them, with reference to their transactions, for several years past, with the revenue department of the General Government. They were charged with irregularities and fraudulent operations, in the nature of undervaluations, to a vast amount; and the most extravagant and unwarrantable statements were made with regard to them. It is known to all our readers that at the time these developments were first made we expressed our entire disbelief in the charges, and our confidence in the honor of the house. Being ourselves old residents of the city, and familiar with the reputation of the house, especially its senior members, we have never for a moment doubted that when all the facts became authoratively known, it would be found that not only had no frauds been committed, but no irregularities even, of any moment. It is now authoratively ascertained that no frauds were committed; and that the irregularities which did occur, and which in a business like theirs it would be altogether impossible to avoid, amounted to less than \$3,000, and this without making allowance for over-valuations, which

are admitted by the Government to largely over-balance this amount. Such is the slender foundation for the gross attacks that have been made upon the honor of this representative establishment of America; attacks that had their origin, as now appears, in the malice of an assistant clerk, who had been previously discharged by them for malversation in office of the grossest possible character.

[*From THE FINANCIAL CHRONICLE, April 17, 1873.*]

#### THE CASE OF PHELPS, DODGE & CO.

Since the case of Messrs. Phelps, Dodge & Co. has been fully settled with the Government the firm has very properly published a letter giving to the public a history of the whole transaction and vindicating their own reputation. The amount of money involved was of small importance compared with the question of the honor and high standing of one of the oldest and most highly respected mercantile houses in the city. We believe that to every candid reader the letter of Messrs. Phelps, Dodge & Co. will carry the conviction not only that they had no intention of defrauding the Government, but that their whole transactions with the Custom House, involving the entry of some \$40,000,000 of goods in five years past, have been singularly free from frauds or evasions of the law. \* \* \*

If the firm had seen fit to resist the claim and brought it to trial, we believe that no jury in the land would have been found against them. But they entered upon the investigation with the utmost confidence of their own innocence, and with the expectation of a speedy and amicable adjustment of the matter.

[*From THE STOVE AND TIN JOURNAL, April 17, 1873.*]

#### PHELPS, DODGE & CO.

We print in another column a letter from Phelps, Dodge & Co. concerning their recent payment of \$271,000 to the Treasury of the United States. Under the present condition of affairs they could do no better than this, and it was cheaper for them to pay than to continue their business with the danger of continual interference hanging over their heads. With a few of the facts of the case the public has been conversant for some time, but the true significance of this prosecution has never before been authoritatively made known. It is

simply a suit carried on by the officials of the Treasury for their own ends, and not for the advantage of the Government or for the promotion of the cause of justice. The firm strengthen their position by letters from Hon. Noah Davis, who was District Attorney at the time the suits began, from Mr. Dudley, late Consul at Liverpool, and from Special Agent Jayne. Mr. Davis and Mr. Dudley are agreed in opinion that no wrong was intended, and Mr. Jayne declares that stories against them have been greatly exaggerated.

Phelps, Dodge & Co. are the largest metal importers in the city and one of the largest mercantile houses in the United States. Their business extends over the whole of Europe, as well as America. In England they are obliged to keep up a branch house, which buys for them, frequently on long time, and under peculiar conditions, and almost every steamer brings goods to them at New York. They purchase sheet iron in Russia, tin from the Dutch Government and from various parties in England, and other metals from those who have them to sell, wherever the commodity may be. Of such goods as they receive at Liverpool they have frequently but little time to make a choice. The New York house wishes a certain quality of sheet tin sent over immediately. The goods are in the warehouse, but the proper bills have not been settled. There is an allowance for damage, for demurrage, or for interest to be deducted, and the proper charges are not to be found on the books. But the tin is carted down to the ships, where an invoice accompanies it, placing it at the Liverpool valuation. There will frequently be a discrepancy, sometimes in favor of one and sometimes in favor of another. But our Government is of a frugal turn of mind. When the cost price is the highest, it estimates by cost; and when the market value is highest it estimates by market value. It always takes the choice. It has discovered among some fifty thousand bills rendered in five years, discrepancies in fifty in which the merchant has received an advantage, while it takes no notice of the bills, ten times as numerous, in which the Government has received more than its due.

We all recollect two or three years ago when Mr. Sumner delivered his speech asking for consequential damages against Great Britain. Two, three, and four hundred million dollars were the sums named by persons who were conversant with the subject as necessary to fill the demand. Our Government adopted his theory, and

pressed it before the arbitrators at Geneva, but the sum allowed did not even equal a twentieth of that asked. It is now thought and justly, that our Government did wrong by pressing for exorbitant damages when the items which could be proved amounted to so little. We had placed ourselves, in the opinion of the world, in the position of a quarrelsome litigant, claiming what was not our own. What, then must be imagined when the United States, being their own arbitrators, and possessed with the authority to enforce their claims, have mulcted one of their oldest and most respectable mercantile firms for a purely technical offence in a quarter of a million dollars, where the Government has received more than its just dues, where the United States Consul at Liverpool declares that the discrepancies were not discrepancies according to the usages of his office, and where the District Attorney was constrained to say that no wrong was intended?

A careful examination of the books reveal the fact that the Government has been overpaid, rather than underpaid. It would seem, therefore, that the Secretary of the Treasury has been using his power far otherwise than in its true and just intent. If upon a full and careful examination of the matter it appears that the money due for customs has been paid and more than paid, it looks like an exhibition of spite or of cupidity on the part of the officials in insisting upon the pound of flesh. However disgraceful this may be, these seem to be the real facts in the case. Phelps, Dodge & Co. have nothing to be ashamed of. Their books have been under examination for four months, and the Treasury has been able to find nothing but the trifling discrepancies of which we have spoken. Their business extends to many millions a year, and the errors claimed by the officials amount to less than one dollar in twenty thousand. How many merchants are prepared to say that their books would not show errors as great as that?

The informer has made some money, if his lawyers have not absorbed the whole of it; the Custom House officials have reaped a harvest; but the United States have taken a quarter of a million of dollars from a mercantile firm on a strict construction of law, where no money was rightfully owing. Recollecting, however, the constant interferences made in many branches of trade by revenue officials, and notably in that of an eminent metal house a couple of years ago, as was given in evidence before a Committee of Congress, they thought it best to

settle any demands rather than have their business interfered with. They are probably right.

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[*From THE RAILROAD JOURNAL.*]

Messrs. Phelps, Dodge & Co., the oldest as it is the foremost firm in the metal trade in this city, has made a frank, clear and self-evidently truthful statement of its business relations to and with the revenue department of the Government, in an exhibit which has been quite extensively published. For many months the house had been assailed by the harpies of the revenue service, and their political backers, in one line or another and charged with intentional deception and fraud in the entry of goods at this port, at undervaluations. Much of the detraction has also been due to trade rivalry and jealousy. The house was thus forced into conflict with the Treasury Department, its business embarrassed, and its honorable record impeached. All this, too, while the respected partners in the concern in this city, and their representatives abroad, admittedly made every possible effort to enable the customs officials to ascertain the real facts of the case, and stood ready at all times and under all circumstances, to render to the Government all its just dues, even to the last cent. Threatened with what promised to become protracted litigation, and persistent annoyance in the prosecution of its legitimate business, though unconscious of any intentional wrongs, it made an offer of compromise as the lesser of two evils, which was accepted by the Secretary of the Treasury, and the firm promised exemption from further prosecution. In the published statement, this eminently trustworthy house makes a plain exhibit of the whole case, in the confident belief that the public will receive its exposition as a vindication of the course it adopted to put a summary end to its troubles.

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#### COMPLETELY VINDICATED.

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[*From THE IRON AGE, April 17, 1873.*]

Accepting the statements of Messrs. Phelps, Dodge & Co., as a true showing of the facts of the case, we consider that they have completely vindicated their reputation, although admitting a violation of the letter of the law. It was a violation, however, from which the government derived sub-

stantial advantage in the long run, and had the case been brought to trial, there can be no doubt that the demand of the Treasury for penalties would have been set aside. It is not to be wondered at, however, that the firm decided that to compromise the case was the cheapest and easiest method of disposing of it; but it is a stinging satire upon our laws for the protection of the Treasury that our merchants find it to their advantage to compromise unjust claims rather than defend their rights in the courts. Probably twice the amount voluntarily paid would not have compensated the firm for the losses and inconvenience resulting from the surrender of their books and papers, and the defence of their case when the Government should be ready to prosecute it; and while it is to be regretted that they did not make the sacrifice on principle, they are not to blame for considering their interest in the matter of first importance. As it is they lay their case frankly and fully before the public, and wherever their statements are accepted as truthful their character for upright and honorable dealing will be fully vindicated.

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[*From THE N. Y. STOCKHOLDER, April 22, 1873.]*

#### CUSTOM HOUSE CONFUSION.

The recent celebrated case of Phelps, Dodge & Co., which has been settled to the manifest credit of the house, illustrates what we copy below in regard to the confusing intricacy growing out of the vast and voluminous system, or rather want of system, of laws and regulations in respect to business at the Custom House. \*

It is satisfactory to know, from the full statement that accompanies the settlement of the matter, that the house, instead of seeking to defraud the Government, have actually in the period named, overpaid the customs dues on the goods which they have imported. How it has happened that in some instances they have been subjected to penalties for under-payment under the tariff laws (Congress has passed forty-five different tariff laws) and the innumerable Custom House regulations, affords some curious manifestations and tendencies in our polity. The history of these transactions out of which this eminent firm will come into unscathed reputation, the result redounding to their honor rather than to their discredit, is of interest not only in mercantile circles, but cannot fail to attract the attention of the general reader.

[*From THE MANUFACTURERS' AND MERCHANTS' REVIEW, April 26, 1873.*]

PHELPS, DODGE & CO.

In another part of our paper will be found a communication from Phelps, Dodge & Co. containing a full and complete explanation of the charges that have been made against them. When these attacks were first commenced we, in our issue of January 18th, expressed our opinion in these words: "No one who knows the manner in which the eminent firm of metal importers, Phelps, Dodge & Co. conduct their business, can doubt that the charges brought against them are malicious and unfounded."

Although the members of the firm have been made the object of many inuendos and reproaches, they have wisely remained silent until their difficulties with the Custom House officials were finally adjusted. No one who will attentively read the explanation which we publish can for a moment doubt that the charges of intentional fraud were entirely unfounded. What errors have been made are due to the unsatisfactory and conflicting nature of our various tariff laws.

We feel sure that the many friends of the firm and the public generally, will rejoice at the complete vindication of the honor and integrity of Phelps, Dodge & Co., whose great reputation has been so justly earned by many years of commercial probity and enterprise, and whose partners have individually and collectively always borne the highest moral and social character.

[*From THE WALL STREET JOURNAL, April 17, 1873.*]

THE FALSE ACCUSATION

AGAINST THE OLD FIRM OF PHELPS, DODGE & CO., OF NEW YORK CITY.

For some weeks past the columns of certain journals in this city have been disgraced by accusations against this old and respected firm, of deliberate intention to defraud the United States revenue.

Under the present system of confiscations for alleged undervaluations in Custom House imports, every respectable firm is at the mercy of adroit and unscrupulous black-mailers, and as a shining mark the powerful firm of Phelps, Dodge & Co. has not escaped.

Had these importers taken a stand in open court, they could have laughed to scorn their assailants; but, comprising a house whose business cannot be stopped, they submitted to a compromise, the following candid and convincing statement of which, clearly shows, to every impartial mind, that they never had the slightest intention, in any shape or way, of defrauding the revenue.

As, however, the whole case has been finally settled by the arrangement between the United States Government and Phelps, Dodge & Co., the firm could not have done better than to have presented all the following facts to the public, the frankness and openness of which, must secure for them a complete acquittal of all charges of corruption or intentional fraud.

## COMMENTS OF THE RELIGIOUS PRESS.

[From THE NEW YORK EVANGELIST, April 24, 1873.]

OUTRAGE OF THE GOVERNMENT  
ON PHELPS, DODGE & CO.

There is not in this city, nor in this country, a firm which stands higher than that of Phelps, Dodge & Co. Possessed of enormous wealth, its leading members have been noted for a character equal to their fortune. Men of public spirit, leaders in every good enterprise, the most liberal contributors to our charitable and religious associations, their names have been justly honored not only in this country, but abroad.

What then was the surprise of the public to learn, some four months ago, that a charge had been made against this firm for defrauding the revenue. The matter has been a long time in negotiation with the Government, and has at last been settled by the payment of \$271,000. This would at first seem to imply an acknowledgement of intentional wrong, but the explanation just made relieves the matter so completely as to be a source of great satisfaction to all their friends. They have recently published a letter, which is a perfect vindication. From this it appears that the errors of valuation in the importing of goods were of the most trifling character; that the Government lost, at most, but two or three thousand dollars, and as quite as often mistakes were made in over-valuation, by which they paid *more* than they ought, the Government really lost not a penny. Yet by a few trifling errors large invoices of goods were rendered liable to seizure and confiscation, amounting to something like a million of dollars, and they submitted to pay over a quarter of a million rather than encounter the vexation and annoyance of a long litigation, which might interrupt and injure their immense business. Of course they were technically wrong, but not morally nor intentionally so. That in such a case the Government should have taken advantage of such slight errors to inflict so large a penalty, seems to be disgraceful to all the officials concerned.

[From THE BAPTIST WEEKLY, April 24, 1873.]

## PHELPS, DODGE &amp; CO.

We think that all right-minded and especially all Christian men will rejoice in the complete and satisfactory manner in which these princely merchants have vindicated themselves from the charges of having defrauded the government in the matter of duties. The statement which they have submitted, accompanied as it is with documentary proofs, is at once eminently clear, candid and convincing. To any one at all acquainted with the gentlemen who compose this firm, the very idea would seem to be preposterous that for the paltry sum of less than \$3,000 of government duties, running over a period of five years and involving transactions in the aggregate of \$40,000,000, they should perpetrate or connive at a series of premeditated frauds.

The only mystery which we have confessed in this whole affair has been that these gentlemen have compromised with the government for \$271,000. But this is very clearly explained in their published statement and shows them to have suffered great injustice. The laws of revenue seem very peculiar and complicated. They provide that in case a single item of any invoices of goods coming through the Custom House shall have been undervalued, it forfeits the entire invoice. For example; if in an invoice of tin-plate, amounting to \$5,000, a lot whose cost is only \$5 shall have been undervalued, then the whole \$5,000 is forfeited to the Government. In the present case, while the loss of duties claimed was less than \$3,000, the amount legally forfeited was \$1,000,000. It also appears that the alleged "irregularities" were of the most trifling and unimportant nature, necessarily beyond the knowledge or prevision of the firm and were exposed by a confidential clerk who shares in the spoils to the amount of \$70,000. One of the features of the case which has more than any other aroused our feelings of indignation is this, that in the government search for frauds they have found that the system which had

been observed by Phelps, Dodge & Co. to average prices which could not with exactness be arrived at, while in the instances called "irregular," the Government lost less than \$3,000, on the whole it has placed, in the United States Treasury many times that amount to which the Government had no right. This as clearly as the sunlight discovers the honorable intentions of this Christian firm. While they have lost money and suffered an outrageous injustice, they have preserved unsullied their previous well-earned reputation.

[*From THE NEW YORK OBSERVER, April 24, 1873.*]

Because the honor of religion is at stake, as well as that of individuals charged with intent to defraud the Government, we have spread out at great length in our paper to-day the statement by Phelps, Dodge & Co., and the collateral testimony of the officers of Government. The name of this mercantile house has been of the highest repute in this city for the last thirty or forty years, its credit unlimited, and its integrity without stain. Its senior member is and has been for many years, President of the Chamber of Commerce, a position which declares the confidence reposed in him by the merchants of the city. He is President of the Evangelical Alliance, Vice President of the American Board of Foreign Missions, a leading member and officer of philanthropic and charitable institutions of the church.

That such a mercantile house should be charged with fraud is in itself a calamity second only to that of being convicted of theft. If such men are not honest, the faith of the community in human nature is shaken, and the shock pervades the entire business world. More than this it brings into suspicion the professions of Christian men, and so damages in the esteem of mankind, that religion whose principles are the best safeguard of society.

When the charge of fraud was first brought against this house, we refrained from giving currency to the calumny, because it was accompanied with no attempt whatever of proof. We believed then, as it is now abundantly shown, that the charge is not only incapable of being substantiated, but that the firm, in its transactions with the Government, have always aimed at doing that which is strictly in accordance with the true intent and meaning of the statutes so far as they are capable of being understood.

[*From THE BAPTIST UNION, April 22, 1873.*]

#### COUNTER FRAUD.

Every loyal citizen must feel mortified and dishonored by the Custom House transaction with Phelps, Dodge & Co. They were charged with defrauding the Government of customs duties, but it now appears that the crime is on the other side, that the representatives of the Government have defrauded them in the most cool and deliberate manner.

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We have regarded the charges of fraud and villainy against customs officers as partizan and unmerited, and our sympathies have been decidedly with the accused; but really, the very worst deeds laid to their account are unequal in turpitude to this robbery of Phelps, Dodge & Co. Men who can be guilty of conduct so unjust and destitute of every attribute of honor, fairness or decency, will do anything, that they dare do, however perfidious and mean. We are shamed and offended, the whole nation is disgraced by such conduct; the President and his Cabinet are involved; the party in power is implicated; every citizen is injured by the deed. Must we believe that the Custom House, at this great centre of commerce, with all its vast powers and opportunities, is a hive of conspirators, where cunning devices are invented to defraud the public? Has it become an enemy to be dreaded, an instrument of oppression and wrong? It is the focus of national wealth and power, and should be the seat of fidelity, honor, and fairness. If

there is integrity in the Government anywhere, it should be manifest here; if officials should so conduct, and laws be so administered anywhere, as to inspire confidence and friendship, it should be in the public offices in Wall street. But all confidence and respect must be destroyed by such perfidious transactions as this with Phelps, Dodge & Co. We were distressed when insinuations hurtful to their fair fame were published, and now we are still more distressed by the disgrace public officers have brought upon the chief institution of the nation, and upon the nation itself. We hope that the authorities at Washington will take some measures to correct the wrong done, and atone for the dishonor incurred.

[*From THE METHODIST, April 26, 1873.*]

#### PHELPS, DODGE & CO.

When the charges of intentional fraud upon the Government were made against

Messrs. Phelps, Dodge & Co., of this city, we kept in mind two facts: That the transactions of importers with the Custom House, under our complicated tariff regulations, make them liable continually to technical violations of the law, and that this eminent house had, a few months ago, detected and exposed a conspiracy to ruin their trade. Through the connivance of a dishonest porter, their books had been surreptitiously examined, and copies of their private correspondence taken. We were not disposed, therefore, to join in the hue and cry raised when they were accused of dishonorable practices.

In the city papers of April 16th, Messrs. Phelps, Dodge & Co. announce the settlement of the claim of the Government against them, and state their case. In the last five years their importations of metals have amounted to forty millions of dollars. It is not claimed by the Government that there has been any irregularity in their important transactions. These, therefore, may be put out of the case. In estimating the values of odd lots of goods, the tailings of long contracts, their Liverpool house had adopted the practice of averaging cost, so that the Government may have lost in duties between \$2,000 and \$4,000. They claim that they have paid enough duties on over-valuations of such lots of goods to leave a very large balance in their favor. An example will show what this means. We quote from Phelps, Dodge & Co.:

"As further proof and illustration of our statements we give the following example of one of the memoranda returned to us by the authorities after settlement, and regarded by them as fully conclusive against us: In July, 1871, we received per steamer Algeria an invoice of 2194 boxes tin plates, included under which was a lot of 174 boxes of odd sizes, 24x24XXXX, and 24x18 $\frac{1}{2}$ XXX (marks which the trade will understand), the remnant of an old and special contract. All these goods, it is admitted by the Government, were invoiced at their true market value at the time of shipment, were so certified by the Consul at Liverpool, and so passed after examination by the appraiser in New York. But there was, in addition, a memorandum transmitted apprising us that the 174 boxes, in virtue of an old contract, would be charged to the Liverpool house at a price which differed from the then actual market value to the extent of about a sixpence per box. The total value of the whole invoice was £3237:14s. The total value of the 174 boxes was £293:4s.:2d., and the difference between the actual market value of these last and their contract cost was £4:7s.; on which difference the duty of twenty-five per cent. would have amounted to £1:18:9d., or a little more than \$5. And yet, on account of this small difference in the general settlement, as a penalty we paid the full value of the 174 boxes—namely, £293:4s.:2d., or upward of \$1400. And thus the delinquencies ran throughout the whole of this extraordinary transaction."

Messrs. Phelps, Dodge & Co. state that the attention of the heads of the house was not called to these slight differences; that when charged with them, they placed their books immediately at the disposal of the Government, and gave all assistance in promoting investigation. They append, also, letters from the prosecuting officers of the Government, acquitting them wholly of intentional wrong. The case as contained in the papers presented is so clear that the public verdict is unanimously in their favor.

Here, then, is a technical violation of revenue laws so complicated that it puzzles an honest importer to comply with them in every detail. Between two merchants there would have been a settlement by the payment of actual differences. But the Government has fined Phelps, Dodge & Co. \$271,000. We will not say that in this instance the Government has done a great injustice, but we think that if the case could have gone to a jury, Phelps, Dodge & Co. would not have been mulcted in any such amount of money.

[From THE CHRISTIAN ADVOCATE AND JOURNAL.]

A few weeks ago the name of the well-known firm of Phelps, Dodge & Company was in all the papers, coupled with the most damaging allegations of fraud committed by that house against the General Government. It was painfully interesting to notice with what ill-concealed satisfaction the scandal was passed from paper to paper and from mouth to mouth, accompanied with sneers at the religious reputations of some of the chief members of the firm. We preferred to await in silence the developments that time was sure to make than to attempt to reach a conclusion on incomplete information. Nor have we waited in vain; but time has fully justified our best hopes in the matter. These points appear now to be pretty well established:

1. That the damaging accusation originated with one of the late clerks of the firm, who by presenting garbled extracts from their books made out a *prima facie* case against them.

2. That had the case been as pretended there would have been no proof of intentional fraud, since on account of the complexity of the revenue laws one may with the best intentions go contrary to their demands.

3. That the whole amount of under-valuation that can be made out is less

than \$4,000; while much larger over-valuation by the Government during the same time is shown on the other side. Perhaps the firm may be made to suffer in the case, for in a conflict between the Treasury Department and an importing house the advantage is all on one side. Technical irregularities, as judged by the officers of the Customs, may possibly be made out, and their extremest penalties demanded; but the defendants in this case will certainly save what is above all else valuable to themselves—their good name.

[From THE (Pittsburgh) PRESBYTERIAN BANNER,  
April 30, 1873.]

#### A FLAGRANT EXTORTION.

The well-known house of Phelps, Dodge & Co., of New York, has submitted a statement to the public, attested by Government officials, which reveals a state of things anything but creditable to our revenue system or to those entrusted with this department of our national Government.

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The result is, that this house, rather than enter upon a long and harassing contest with the Government and trusting to its sense of equity, has been compelled to pay the sum of two hundred and seventy-one thousand dollars, one-half of which goes to the informer and three or four Federal office holders, while in equity not one dollar of unpaid duties was owing to the Government. If there had been the shadow of right in the claim, the forfeiture ought to have been one million of dollars, and the members of the firm should have been held criminally liable for violating the revenue laws. Either the Government has been defrauded out of seven hundred and twenty-nine thousand dollars, or two hundred and seventy-one thousand dollars have been most unjustly extorted from Phelps, Dodge & Co. The facts, fully examined, prove that the latter is the case, and there is no use in mincing words about the matter. Owing to clumsily framed laws, a rascally informer and three or four office holders have enriched themselves, by a most iniquitous proceeding against a great mercantile house whose fame is known throughout the world. To cheat the Government is universally conceded to be a great crime; but how shall we properly designate the act of a Government which allows such a wrong to be inflicted upon

any of its subjects? This is an occurrence in which every American citizen is interested, and in which the honor of our country is involved. No Government has a right to inflict injury upon its own citizens, any more than to commit outrages against other countries. The property and the reputation of the citizen are as sacred as the rights and the authority of the Government.

[From THE CHRISTIAN UNION, May 7, 1873.]

#### THE CASE OF PHELPS, DODGE & CO.

If we have been too long silent in relation to the matters at issue between the Government and the well-known firm of Phelps, Dodge & Co., it is only because we wished to get at all the facts, and to hear all that either party had to say, before uttering an opinion. And now, having waited until the pleadings are ended, it is at once a duty and a pleasure to express our conviction that the statements of the accused, not having been invalidated in any essential particular, ought to be accepted as a complete vindication of their integrity in the transactions which were made the basis of an accusation or fraud. It seems clear that their infractions of the revenue laws were the result of a misunderstanding as to the proper construction of those laws, and that they lost even more by overcharges of the Government than they gained by under-estimates of the value of goods. The money exacted of them was an outrageous extortion; the Government had no right to it, and was dishonored by receiving it. No one acquainted with commercial affairs can doubt that the Custom House is so organized by law as to hold out irresistible temptations to robbery. The intricacies and discrepancies of the tariff laws tend to bring officers and dishonest merchants into collusion, regularly, while they often enable greedy officials, as in this case, to persecute the innocent, and put money in their own pockets. The charges against Phelps, Dodge & Co. undoubtedly had this origin and basis. Judge Noah Davis, who was United States District Attorney when this trouble began, expressly acquits the firm of any intention to defraud the Government, and says that "in a business of many millions of dollars during the period of five years in which these irregularities had occurred, and during which they (the firm) had paid to the Government several millions of dollars in duties, the whole amount lost by the alleged

fraud fell short of the sum of \$3,000." The great error of Phelps, Dodge & Co. was in consenting to a compromise, which looked like an admission of guilt, instead of allowing the matter to be investigated in open court, where their vindication would no doubt have been complete. The name of this house has so long been almost a synonym for commercial integrity and public beneficence, that good citizens of all parties must rejoice that the attempt to fasten upon it a stigma of fraud has so signally failed.

[From THE INDEPENDENT, April 24, 1873.]

#### GOVERNMENT FLEECING.

Phelps, Dodge & Co. have submitted a statement to the public in reference to their revenue difficulties with the Government, accompanied by letters from Thomas H. Dudley, consul at Liverpool; B. G. Jayne, special revenue agent; and Judge Noah Davis, District Attorney of the United States at the time the proceedings commenced against the firm. Assuming the truth of the statement, which we have no reason to doubt, especially as it is confirmed in its most material points by the letter of Judge Davis, whose official duty, as District Attorney, made it necessary for him carefully to investigate the case, we come to the following conclusions of fact: First, that, although the firm had technically, by an unconscious mistake, mainly growing out of the complicated nature of our revenue laws, rendered themselves liable under these laws, they stand completely exonerated of any actual intent to defraud the Government by false invoices. Secondly, that there were no false invoices, the memoranda on which the proceedings were instituted not being invoices at all. Thirdly, that an examination of their books, covering a period of five years, during which their importations amounted to forty millions of dollars, with the payment of about eight millions in duties to the Government, shows that the revenue loss to the Government by under-valuation is less than three thousand dollars, while during the same period they have paid a much larger sum to the Government, in excess of its real revenue claims, as the consequence of over-valuation. Fourthly, that the prosecution was instigated by a spy in the character of a clerk who had been dismissed for good reasons, and who, from malignant and selfish motives, stole some memoranda and destroyed others, so

as to make a *prima facie* case against the firm.

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One-half of the money paid goes to the informer and some three or four Federal officers, whose private interests are served by just such shameless depredations upon the mercantile community. These officers who are enriched by thousands of dollars, of course, like the compromise. Such compromises are a very fine perquisite to their salaries. The President has recommended that the moiety system, which furnishes a strong temptation to such fleecing operations, should be wholly abandoned. The case of Phelps, Dodge & Co. supplies a very forcible reason for following this advice.

[From THE EXAMINER AND CHRONICLE, April 24, 1873.]

#### THE PHELPS, DODGE & CO. SCANDAL.

Some months ago, when the testimony before the Credit Mobilier Committee at Washington was daily making such havoc with reputations previously unspotted, it came to pass that calumnies were believed by many in proportion to their blackness, and the estimation in which the accused had previously been held. The atmosphere was full of doubt and suspicion. It was not strange, therefore, that when Messrs. Phelps, Dodge & Co., of this city, were accused of defrauding the Government in the matter of customs, by invoicing goods at less than the actual cost, the accusation should have been believed. The most painful feature was that by so many it was so *eagerly* credited; that so few were willing to wait until all the facts were known, before passing judgment; and last of all, that the long and honorable career of the house, and the unblemished Christian character and well-known generosity of its members, were allowed so little weight in the scale of probabilities. The firm have just published a full statement of the case, substantiated by letters from the officers of the Government who investigated it, which shows how cruel are the suspicions, and how unjust the laws under which they have suffered.

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The charges against this firm have been circulated far and wide, and commented upon all the more freely because the senior members are so well known as earnest, active and generous Christian men—fore-

most in every good work. We have protested from the beginning against condemning, without full proof, men whose lives have been one long and eloquent protest against wrong, and we hope the press generally will accord to the firm the generous exculpation which they deserve. The gist of the whole matter is, they have paid over a quarter of a million dollars for the technical violation of a law which it was practically impossible to obey.

[From THE CHRISTIAN INTELLIGENCER, May 8, 1873.]

#### PHELPS, DODGE & CO.

We have withheld the expression of any mere opinion concerning the integrity of this well-known firm, because every one understands the relations of its members to all Christian interests, and would give little weight to any debatable conclusions which a religious paper might state in their favor. We now bring together, however, such a summary of the facts in their recent case with the Government as will dispense with any expression of our opinion or feeling.

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This seems to end this carefully cultivated scandal, except as concerns those who have made money out of it. The whole reputable press has decided that the transaction leaves no stain on the moral character of Phelps, Dodge & Co.

[From THE N. Y. DAILY WITNESS, April 24, 1873.]

#### GOOD OUT OF EVIL.

In like manner Messrs. Phelps, Dodge & Co. have suffered at the hands of the Custom House for the good of the trade. To gratify an infamous combination of deeply interested parties (we would like to publish an exact account of how the enormous plunder was divided), the Secretary of the Treasury, Boutwell, consented to virtually black mail that house to the extent of \$271,000; and the result is that his successor is going to make a clean sweep of the vexatious and contradictory regulations which made that great piece of injustice possible.

Especially, we doubt not, will the provisions of the present law be materially altered with respect to the shares in seizures and fines of informers and Custom House officers. Indeed, the necessarily oppressive character of all revenue laws, heightened by the unnecessary severity of

the present law, may have a decided effect in leading to a milder tariff altogether, making many articles free which are now fettered with vexatious and comparatively unproductive imposts, and diminishing and simplifying the duties on others.

In view of its probably great results, therefore, importers may be very thankful that this case of oppression has occurred.

[From THE (Chicago) ADVANCE, April 29, 1873.]

The long and explicit statement by Phelps, Dodge & Co., of the circumstances which led to their prosecution for violation of the revenue laws, will be accepted as good evidence that they were guilty neither of intentional nor of actual fraud. Probably they recognize quite as keenly as will any who read their statement that they were too careless—more careless than any one has any right to be. Technically they violated the law. But it has cost them \$271,000, and they will not be apt to be caught nodding again.

[From THE (Chicago) INTERIOR, May 7, 1873.]

#### “ HOW ARE THE MIGHTY FALLEN ! ”

During the past few months, a large part of the press of the country has been teeming with statements emanating from Government officials, to the effect that one of the most eminent mercantile houses of the country had, during a term of years, intentionally committed frauds on the revenue. The high standing of the firm, the gravity of the charge made against them, and the amount involved (near \$2,000,000,) soon attracted the attention of the whole country, and expectation was on tip-toe for the *denouement*. Bad men railed at Christianity, and pointed to this case of supposed infamy as a stunning blow to the Christian religion. Good men everywhere exclaimed : “ If Phelps, Dodge & Co. cannot be trusted, whom shall we look to for honorable dealing ? ”

The agony of suspense has been broken by the settlement of the alleged frauds ; an explanation by the firm ; and a rejoinder by the Government, in the columns of the New York press, covering the facts of this most remarkable case. Now, in the verdict of a discriminating public judgment, *who has fallen ?*

With no evidence but that exhibited by the Government itself, every fair-minded

man must conclude that this great *Government* has fallen from the dignity belonging to a bulwark of defence, until it has become the oppressor of the innocent.

We will quote but two facts, given by the United States District Attorney, as sufficient to demonstrate the truth of this statement beyond the possibility of a doubt:

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We cannot but conclude that the Government has greatly wronged some of its most valuable supporters in this case, and that the law under which it has been possible to perpetrate the outrage should receive the attention of Congress at once. If the work of Government detectives in discovering frauds upon the revenue shows no better scope for their energies than such cases as this, that bureau of the Treasury depart-

ment should be abolished. Give us specific, instead of *ad valorem* duties, and three-fourths of the Custom House officials can be dispensed with; the possibility of fraud will be diminished tenfold, and the same amount of importations will show a largely increased revenue.

The religious press of the country, especially, should make the Government feel the consequences of its action in this case, in a pungent and merited condemnation of its course towards representative men in the Christian church, whose reputation and business have been assailed without cause, and in a manner that affords not the least excuse.

The sympathy of the whole country must go with Phelps, Dodge & Co., now that the facts are made known.



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## REJOINDER FROM WASHINGTON.

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## A TELEGRAPHIC REJOINDER FROM WASHINGTON.

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Subsequently to the appearance of the succinct history of the case, with which this pamphlet opens,—and seemingly called forth by the almost unanimous approval which the newspapers and the mercantile community bestowed upon it,—the following telegram from Washington was sent over the wires of the Associated Press :

WASHINGTON, April 22.—Senator Boutwell contradicts the statement of Phelps, Dodge & Co., that they were innocent of the charges of fraudulent invoices, and that the sum of \$271,000 was forced out of them by way of a compromise in their recent difficulty with the department. When the charges of fraud were brought against that firm they filed a statement at the Treasury, asserting their innocence, and offering to pay the \$271,000. Mr. Boutwell, who was then Secretary of the Treasury, declined to receive the money, and notified the firm that the courts were open, and if they were innocent of the charges they should go into court and prove their innocence. Upon this notification they withdrew the assertion of their innocence, and it was then that their offer to compromise was entertained. The Department in no case accepts money of any party charged who claims to be innocent, being allowed by law to compromise with offenders only after guilt is admitted; and it was on this distinct understanding that the compromise with Phelps, Dodge & Co. was made. Never while Mr. Boutwell was at the head of the Treasury Department was any compromise made with persons who claimed to be innocent.

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### COMMENTS OF THE PRESS UPON THE FOREGOING.

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[*From THE FINANCIER, April 26, 1873.*]  
DISCOURAGEMENTS FOR MERCANTILE  
BUSINESS.

Mr. Boutwell naturally objects to the imputation indirectly cast upon his management by the published explanation of their famous case by Phelps, Dodge & Co., and he declares that the treasury department during his official term never compromised with anybody except upon the either open or tacit admission of guilt on the part of the latter; in other

words, a person accused of attempted fraud *may* get his case compromised and be allowed to escape with less than the technical penalty, provided that he admits that he is guilty and that the custom-house is very merciful towards him, but if he preserves a bold front and protests his innocence he must stand a trial and all it involves. But Mr. Noah Davis, who as District Attorney, passed upon this case and advised the acceptance of the \$271,000, wrote to Phelps, Dodge & Co. in these terms, which could not be stronger: "If I had come to the

conclusion that you had acted with actual design to defraud the Government, I should have insisted upon the forfeiture not only of the value of the articles above referred to, but of the entire invoices of which they formed a part, amounting to fully \$1,000,000; but my examination, with the explanations made to me by you, showed clearly, as I thought and still think, that the idea of defrauding the Government of its lawful duties had never entered your minds."

The question of veracity between Mr. Boutwell and Mr. Davis is not raised, for there is no square contradiction; but taking the statement of the firm with that of Mr. Davis, there seems to us no reasonable doubt that the exact truth has been told and that the Government, founded and designed to protect individual rights, has come down so low as to pillage directly from individuals. It is a sound rule in law courts that good reputation counts something in favor of an accused person, and that the absence of motive for doing the thing charged is a strong presumption against the truth of the charge. The firm in question assuredly have as high a reputation as any commercial firm; they are too wealthy to be moved by temptation to so petty a fraud, even if not too sagacious to incur its risk; moreover, they are old-fashioned New Yorkers of the ante-Credit Mobilier times, when the general habit was not so much as now, to walk near the perilous edge of dishonesty, and the young members of the firm have not been bred among loose notions of morality; hence the improbability that such a firm would knowingly deprive the revenue of a dollar is so great that nothing short of the most positive and unequivocal evidence can establish the fact against them. Being able to lose \$271,000 without weakening thereby, if their case so directs public attention to the subject of the tariff as to effect some reform in it, the firm will probably not count their experience entirely a loss.

[*From the N. Y. EXPRESS, April 22, 1873.*]

PHELPS, DODGE & CO.

We notice the recent carefully prepared and self-evidently truthful statement of the above house, as to their innocence of any intentional fraud or material wrong upon the Treasury of the United States, through an under-valuation of dutiable goods imported by them, is denied over the signature of ex-Secretary Boutwell, late of the Treasury. The ex-Secretary states, as evidence of the admitted guilt of the house, that the Treasury

Department never compromises with parties claiming to be innocent, and that the claim of innocence in this case was withdrawn before terms of settlement would be entertained by the Treasury Department. This the ex-Secretary gives to the public as conclusive proof of the falsity of the statement of Messrs. Phelps, Dodge & Company, in their recently published statement of the affair.

To this flimsy record we wish simply to state the fact that in all cases of legal or illegal seizure we admit that the Treasury Department demand such terms as they please, one of which is that the party whose goods are legally or illegally seized shall withdraw all claim of innocence, as an indispensable pre-requisite to any negotiation of settlement whatever. This is done to protect United States officers from individual responsibility for damages, to which the law otherwise would make them amenable. The withdrawal of all claim as to innocence is to protect the officers of the Government, without which the cases would be postponed and litigated *ad infinitum*, to the great annoyance and, in this case, incalculable injury of the claimants. The same rule is required in many of the other departments of the Government. This but simply adds to the outrage.

However innocent, the claimants must first withdraw all claims of innocence, upon which future suits for damages could be based, before the Treasury Department will entertain any negotiations for settlement, and in all cases, whether the party is guilty or innocent. Unless this arbitrary and illegal demand is freely complied with, it is useless to think of securing any settlement, however extortionate the demand may be. In this case the ex-Secretary does not deny, but virtually admits, the truth of the statement by the firm that the insignificant sum of \$2,000 or \$3,000 would cover the whole claim against them, even upon their own showing, yet \$271,000 was demanded and paid to avoid the loss of two or three millions of goods arbitrarily and, as they show, illegally seized; and because this old and responsible house thought proper to give to their numerous friends and customers a plain statement of the facts of this illegal seizure and wrong upon them, the ex-Secretary now comes out with a card, not to deny the truth of the claim made, but mislead the public, and set up the defence in behalf of the Treasury that the plea of innocence was withdrawn before settlement was made. This, we repeat, but adds to the injury, and we feel it due that this subterfuge should be exposed.

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In all our reading, excepting in the single instance of the ex-Secretary of the Treasury, we have not found one person or journal to

defend the plunder of \$271,000 from Phelps, Dodge & Co., most of which has gone into the hands of spies and informers.

[*From the N. Y. TRIBUNE, April 22, 1873.*]

#### BOUTWELL AND DAVIS.

Mr. Boutwell's statement of the case of Phelps, Dodge & Co. calls for further explanations from somebody. It was made to appear, in the narrative published by the firm and confirmed by the letter of Judge Noah Davis, that the importers had been innocently betrayed into a technical violation of the Revenue laws, and that the Government took advantage of their mistake to wring from them \$271,000. The inference was that the Secretary of the Treasury was unable to withstand the pressure of the informer and Customs officers entitled to share in whatever might be recovered, and consented to a "compromise" which was no better than extortion. This would be a very serious charge to make, and we cannot wonder that Mr. Boutwell hastens to repel the imputation. He declares that "never, while Mr. Boutwell was at the head of the Treasury Department, was any compromise made with persons who claimed to be innocent," the Department being allowed by law to compromise with offenders only after guilt is admitted. For this reason, Mr. Boutwell says he refused to entertain the proposal made on behalf of Phelps, Dodge & Co., until they withdrew the assertion of their innocence. He does not say that he compelled them to confess guilt; but he placed them in the position of tacitly acknowledging a fraud.

But Judge Davis, who in his capacity of United States District-Attorney passed upon the case and reported it to the Secretary with a recommendation that the compromise be accepted, writes to Messrs. Phelps, Dodge & Co.: "If I had come to the conclusion that you had acted with an actual design to defraud the Government, I should have insisted upon the forfeiture not only of the value of the articles above referred to, but of the entire invoices of which they formed a part, amounting to fully \$1,000,000; but my examination, with the explanations made to me by you, showed clearly, as I thought and still think, that the idea of defrauding the Government of its lawful duties *had never entered your minds.*" Of course, on Mr. Boutwell's theory, the Government had no right, either in law or morals, to accept the \$271,000 if the case was as Mr. Davis represented it. The Secretary moreover had no right to act except upon the District-Attorney's

representations. The District-Attorney would not have proposed a compromise unless the firm had satisfied him that they were innocent; the Secretary of the Treasury would not have accepted it unless they had confessed themselves to be guilty. Which is right? So far, the statement of the Secretary makes the action of the Government more odious than ever; for in addition to the wrong of squeezing from honorable men more than a quarter of a million of dollars for a technical offence, which the Government's own attorney reports to have been unintentional, it imposes upon these unfortunate merchants the cruel necessity of constructively owning themselves to be swindlers.

#### THE CASE NOT CHANGED.

[*From THE IRON AGE, April 24, 1873.*]

If all this be true, we fail to discover that it contradicts in any important particular the statements of the firm of Phelps, Dodge & Co., published in our last issue. Those who have availed themselves of the gracious permission of the Treasury Department to carry their cases to the courts, have derived but small satisfaction therefrom; and while it would have been the proper course for the firm to pursue, they probably concluded that the cheapest and wisest thing to do was to withdraw their assertion of innocence and settle the claim of the Treasury first. The letter of Judge Davis very fully discusses the legal aspects of the case, and on that the firm can safely rest their disclaimer of fraudulent intent, whatever may be Mr. Boutwell's private opinion in the matter. "If," says Judge Davis, "I had come to the conclusion that you had acted with an actual design to defraud the Government, I should have insisted upon the forfeiture not only of the value of the articles above referred to, but of the entire invoices of which they formed a part, amounting to fully \$1,000,000; but my examination, with the explanations made to me by you, showed clearly, as I thought and still think, that the idea of defrauding the Government of its lawful duties had never entered your minds."

In the light which this statement throws upon the official opinion of the prosecuting officer of the Government, it is difficult to believe that the firm made any confession of moral guilt. But Mr. Boutwell's statement demands an explanation, which will probably be that what he said was very different from what he is reported to have said.

[From THE EVANGELIST, April 24, 1873.]

As we have condemned severely the conduct of Mr. Boutwell in this matter, it is but fair to hear what he has to say in his defence. A despatch from Washington gives the following explanation:

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This answer is far from being satisfactory, for it is not sufficiently explicit. What does Mr. Boutwell mean by talking about "innocence" and "guilt"? That this firm were technically in error, and therefore legally liable, they do not deny; but that they were morally or intentionally "guilty" of any wrong whatever, they do deny utterly and indignantly. If Mr. Boutwell means to insinuate any such thing, he not only contradicts *them*, but Judge Davis also, who as District Attorney of the United States had charge of the case, and who, after a full investigation, declares himself fully satisfied that "the idea of defrauding the Government *never entered their minds*." Where then was there any "guilt"? The case remains as before—that the Government took advantage of a technical error to inflict an enormous penalty on a commercial house of the very highest standing and character. The whole thing is utterly disgraceful. If Mr. Boutwell has no better explanation than this to give, he had better keep silence and retire from public observation, knowing that his last official act was one to disgrace himself and his country.

#### OPINIONS OF OTHER TREASURY OFFICIALS.

[Washington Despatch to the N. Y. HERALD, April 23, 1873.]

The Treasury officers are not unanimous, however, in sustaining the late assertion of ex-Secretary Boutwell, that the compromise itself, which the firm effected, was an evidence of guilt, because innocent violations of the law were not compromised but forgiven. There are those in the Department who think that Mr. Boutwell may have been misled into accepting forms as facts. It is true that no compromise can be affected without confession of guilt; but if the Congressional investigation, to which the matter is likely to lead, should be had, it will probably appear that such confession has been made under duress in many more cases than one. By adroit manipulation of the various laws applicable to the subject the swarm of Federal officers at New York, or any other large port, are able to work the virtual ruin of the business of a large and reputable house by arbitrary seizure of books,

papers and goods in store, while the law's delays intervene to prevent the recovery of name and trade. The bare knowledge of this ability is believed to be sufficient to compel nine out of every ten business houses, who fall under the suspicion of the officials, to settle on the best terms obtainable, independent of the questions of guilt and proof of guilt. The immediate concern of the Government officers is to realize immediately upon their respective shares, of whatever sum is exacted; hence it is necessary to obtain a *pro forma* admission of culpability as a condition precedent to a waiver by the accused of all rights of action for the recovery of the sum paid the Government. In case of hesitancy to confess guilt the mere formality of the transaction is first pointed out, and that failing, the terrors of the arbitrary processes of seizure and detention, and those, but preliminary though prolonged, are invoked and seldom in vain. The whole system is known at the Treasury to be demoralizing, as was admitted of the same system in the internal revenue service before its abolition. Its practical illustration is found in the case of Judge Noah Davis, who, as United States District Attorney, was stimulated by the expectation of his moiety to pursue the firm of Phelps, Dodge & Co. till the compromise money was paid, and who now, upon his judicial conscience, acquits them of any intentional, and therefore culpable offences against the revenue.

[From THE (Phila.) PUBLIC RECORD, April 25, 1873.]

#### THE INVOICE CASE AGAIN.

Technically, Mr. Boutwell has made a point against the reputation of Phelps, Dodge & Co.; but practically examined, the point vanishes into thin air. He shows that this firm, in offering to pay \$271,000 by way of compromise for the alleged fraudulent invoices, asserted their innocence of any intent to cheat the Government, and that he refused the offer until this assertion should be withdrawn, whereupon they withdrew it, and were allowed to settle on these terms. The inference sought to be conveyed, of course, is that Phelps, Dodge & Co. tacitly admitted their guilt; and yet nothing can be more disingenuous than such a statement of the case.

The simple fact is that in all instances where it is sought to take the benefit of the act allowing compromises to be made in alleged frauds the claim of innocence must be withdrawn. Without this technical process the benefit of the procedure cannot be secured; and hence, so far as Phelps, Dodge & Co. are

concerned, their action in withdrawing their first indignant protest was really in the nature of a legal or technical pleading, which is essential to an arranged form of settlement, but does not at all touch the real issue involved. Their act corresponds to the many familiar pleas in court, or legal fictions, which are required in order to proceed to a summary settlement; that it was designed to operate as an actual confession of guilt is a preposterous inference.

Again, the reason why the law requires a claim of innocence to be withdrawn throws light on the whole transaction. Its original design was to protect the United States officials, witnesses and others, from subsequent legal proceedings brought by the parties accused. These officers might be otherwise proceeded against for defamation of character, endeavor to injure one's business, and what not. Hence, the Treasury Department has for many years been obliged to require a with-

drawal of any claim of innocence before abandoning a suit. The rule subsisted long before Mr. Boutwell's day, and has been applied in many cases. Made aware of this rule, it was obviously necessary for Phelps, Dodge & Co., whether guilty or innocent, to comply with these requisitions, in order to arrive at the desired end. But to turn this purely technical and arbitrary point upon them as a moral confession of guilt on their part, is wholly unjust. Yet the Government has been forced to resort to this device, in order to excuse itself for its conduct in taking more than a quarter of million dollars out of a firm whose invoice accounts were only \$2,300 less than what the Government conceived it ought to pay. A Government that indulges in such practices, and defends itself in such a way, may well expect the indignant comments of those who are forced to transact business with it.



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## THE OFFICIAL CORRESPONDENCE.

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## THE OFFICIAL CORRESPONDENCE.

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On the 27th of April, 1873, the official correspondence in relation to the case of Phelps, Dodge & Co., from the files of the Treasury Department, was given to the public. Some of the leading newspapers found room to print the voluminous and intricate mass of letters, comprising all which passed between the officials at Washington and the revenue agents, attorneys, etc., from January 3, 1873, to the final settlement on the 25th of the ensuing month. They commence with the report of the Special Agent, Jayne, and cover all the negotiations which subsequently ensued. Letters are given from U. S. Attorney Bliss, who shows that the full amount of errors discovered on \$40,000,000 of importations did not exceed the sum of \$1664.68; from E. C. Banfield, Solicitor of the Treasury; Secretary Boutwell; Mr. William E. Dodge, and the Attorneys of Phelps, Dodge & Co. These documents will be found in the Appendix. They received the careful study and analysis of the American Press, and, as will be seen by the following utterances from newspapers of high standing, representing every party and various localities, revealed nothing which in any way contradicts or refutes the story of the case as set forth in the Statement of the Firm.

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### COMMENTS OF THE PRESS UPON THE OFFICIAL CORRESPONDENCE.

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[From THE N. Y. TRIBUNE, April 28, 1873.]

It was threatened by the Treasury Department that the correspondence relating to the Phelps, Dodge & Co. compromise should be made public if the friends of the firm did not keep quiet. They did not mind the threat, apparently; and the correspondence was sent out to the press. From the letters relating to this painful affair, which we print herewith, it will be seen that the whole story has been told already. There is Mr. Special Detective Jayne hungrily clamoring for the forfeiture of goods valued at \$1,750,000, on account of an alleged deficiency in duties paid, amounting to \$1,664.68, according to the United States District-Attorney. Then there are the duties claimed. Then there are the various proposals for compromise made by the defendants. The first of these, as we already knew, was rejected because the firm reasserted their innocence in making it. Next there was some higgling as to the amount to be paid and the

terms in which the proposition for the final settlement was to be worded. Finally, we have the acceptance of \$271,017.23 by the Government, with the express understanding that the compromise covers only a specified class of charges. To make the correspondence complete, the letter of ex-Attorney Davis, who had originally the charge of these cases, should appear again. Mr. Davis wrote, when he had examined the case, that the thought of defrauding the United States Government had never entered the minds of Phelps, Dodge & Co. The correspondence does not show that Secretary Boutwell had any opinion differing from Mr. Davis's. It does show that the Secretary would not discontinue the suit for \$1,000,000 until the firm had withdrawn their protest of innocence and had further conformed to the demands made upon them for money. The threatened "exposure" of the Treasury Department hurts nobody but its own subordinates.

*[From the same Newspaper, April 29, 1873.]*

### THE TREASURY AND THE MERCHANTS.

The Treasury Department has not mended its case by the publication of its correspondence in the matter of Phelps, Dodge & Co. These documents throw no light upon the violations of the revenue laws for which the firm has been mulcted. They make no sensational disclosures. They discredit none of the statements which the merchants have published in their own defense. We have first the report of special agent Jayne, reciting the discovery of discrepancies in the invoices, and commenting with much impertinent virtue upon the wickedness of frauds against the revenue. Then comes the formal correspondence between Mr. George Bliss, jr., and Solicitor Banfield, on the one hand, and the attorneys of Messrs. Phelps, Dodge & Co. on the other, respecting the offer to compromise. That is all. There is no confession of guilt. There is nothing, except Mr. Jayne's report, to show any intention to defraud—and when Mr. Hand-cuff Jayne goes after an importer, his zeal, as we all know, is not invariably tempered with discretion. Of course the Treasury Department does not publish Messrs. Phelps, Dodge & Co.'s explanation of the discrepancies; neither does it publish the letter of ex-District Attorney Davis, who declares that an examination of the whole case, in the light of their explanations, convinced him that "the idea of defrauding the Government of its lawful duties had never entered their minds." The papers now given to the public show, however, that Mr. George Bliss, jr., who succeeded Judge Davis as District Attorney, recommended the Treasury to compromise the claim, on the ground that the Government would not get what it demanded if the case went into court. "I am influenced to this course," he says, "by the fact that the nominal amount claimed is so enormous in comparison with the amount of undervaluation and fraud, that I believe it would be exceedingly difficult to obtain a verdict for the amount claimed." Mr. Bliss, in fact, advised the Secretary to take \$271,000 because he did not believe he could get any more. Judge Davis recommended it because he was satisfied of the innocent intent, and did not believe a forfeiture of the whole amount was deserved. But if there was no guilty intent, the Government had no moral right to exact a penny above the actual deficiency of duties. The statutes empower the Secretary of the Treasury "to mitigate or remit

such fine, forfeiture, or penalty, or remove such disability, or any part thereof, if in his opinion the same shall have been incurred without willful negligence, or any intention of fraud in the person or persons incurring the same." The officer upon whose representations the Secretary of the Treasury is expected chiefly to rely is the District Attorney. The District Attorney, however, was interested in forcing a compromise, because he was entitled to two per cent. of the gross amount recovered. The chief officers of the Custom-house—the collector, surveyor, and naval officer—heartily co-operated with him, because they were jointly to receive one quarter of the remainder.

In this blackmailing operation the Government officials stand in a hardly more agreeable light than the spy who set the proceedings on foot. The "compromise" looks like nothing but a scheme to extort money, and the firm made a terrible blunder in submitting to it. Their course, however, is not incomprehensible. Probably they had good reason to dread any further quarrel with the Custom-house. Threatened with a vexatious prosecution, seizure of their books, interruption of their business, and injury to their credit, they went before the Secretary of the Treasury in the attitude of criminals suing for mercy, paid the quarter of a million, and were told to go home thankful that they had not been robbed of three-quarters of a million more.

Long before the political campaign of 1872 we denounced the frauds and injustice that flourish in our Custom-house under the system which makes the collection of the revenue a scheme for rewarding political followers and pushing partisan advantages. The Patterson investigation in 1871 brought to light an extent of dishonesty among the officials, and oppression of the merchants, far beyond the current suspicions. A second investigation, in 1872, revealed greater abuses than ever, especially in the extortions charges levied upon commerce, the license granted to spies and informers, and injustice towards reputable merchants; but the Administration took no notice of the disclosures because it had no desire for reform. One of the most important witnesses before the Patterson committee was Mr. William E. Dodge, who testified emphatically that, owing to the extortions of General Order store-keepers, and the various persons connected with the Custom-house, New York had become the most expensive port in the whole world. His evidence was considered extremely damaging, and has

often been referred to in subsequent discussions. The names of Phelps, Dodge & Co. also headed an unavailing petition for the redress of certain grievances, signed by one hundred New York merchants, and presented to Collector Murphy. Nevertheless, Mr. Dodge was unwise enough during the late campaign to give his influence for the continuance of the evils of which he had complained. He believed, we suppose, that the Washington authorities were really anxious that the management of the Custom-house should be just. We should like to know what Mr. Dodge thinks about it now.

For Mr. Dodge's fidelity during the canvass has apparently not wiped out the remembrance of his testimony during the investigation. We should be sorry to say that he has been persecuted for telling the truth; but we do believe that if he had not offended the Custom-house in 1871 he would have been less likely to suffer from the outrage which has just been inflicted on his firm. It is not often that the great New York organization of corruption and oppression has so tempting an opportunity at once to seize a rich spoil, and to revenge itself upon a witness who has exposed its abuses. While the Custom-house is controlled by professional party hacks, we may expect it to be filled with extortioners. While it is managed for partisan purposes, we may expect it to be used as an instrument for enriching party friends, punishing party foes, and awing those who know too much into silence. There is no firm in New York which does not run the same danger which Phelps, Dodge & Co. incurred. Any importer who complains of extravagant imposts upon commerce, or exposes corruption and mismanagement, may have his papers seized by a Custom-house agent, and his business overhauled for any number of years. Under our complex system of valuations it will go hard if some apparent irregularity cannot be discovered, and in any case the inconveniences and disgrace of the seizure must entail serious loss.

We leave this case to the consideration of the mercantile community—only reminding them that if they want to save themselves from the fate of Mr. William E. Dodge they must reform the Custom-house from roof to cellar; and if they want to reform the Custom-house they must begin at Washington.

[*From the N. Y. EVENING POST, April 28, 1873.*]

#### A QUESTION OF VERACITY AND CHARACTER.

There is a question of veracity between Messrs. Phelps, Dodge & Co. and Mr. B. G. Jayne, "special agent." Messrs. Phelps, Dodge & Co., even Mr. Jayne condescends to acknowledge, is a "house of wealth and standing." Other importers are "an ordinary brood," but Phelps, Dodge & Co. are above the influences under which the "brood" is supposed by Mr. Jayne to do business.

On the other hand, Mr. B. G. Jayne, as the special agent of the Treasury Department, is simply a detective. An informer, a spy, a discharged clerk, anybody who has, or thinks he has, any sort of information against any of the "ordinary brood of importers" by which they can bring against such persons a charge of either actual or constructive fraud, goes at once to Mr. Jayne. Mr. Jayne is the receiver of all such charges from all such persons; he is the—so to speak—"uncle" of that class of gentlemen who thrive by secretly stealing into the counting-houses and account-books of the "brood" and robbing them—not indeed of the contents of their money-drawers, but—of their good names, or compelling them to submit to be enormously black-mailed according to the act made and provided.

Mr. Jayne as "special agent" gets his legal share of whatever sum the particular member of the "brood" who may be caught may be compelled to pay. But that, it is supposed, is not all of Mr. Jayne's profit, as he is an expert in the matter of Revenue laws. He knows just where the traps and snares and tangles are. He can wind the meshes of the law so tightly and so deftly around one of the "brood" that his escape is hopeless. So clever and so skilful is he, that the miserable spy and informer is perfectly helpless without the "special agent." The half-forfeit of whatever sum is to be squeezed out of the importer the spy cannot touch without Mr. Jayne's aid. He may listen at keyholes; he may bribe porters to let him into counting-houses at night; he may secretly copy invoice-books or steal memoranda; or he may gather, at whatever pains, the information which is to entangle the unfortunate merchant in the snares and pitfalls of obscure laws; his labor is all in vain without Mr. Jayne. He and Mr. Jayne must agree that there is a case, and if the Treasury agent "can't see

it," the spy may go his ways. The poor wretch who betrayed the confidence of Phelps, Dodge & Co., who picked out here and there an item, stole here and there a memorandum, who wove out of these slender materials a grave offence against the law in that house, carried his bundle to Mr. Jayne's "spout." Mr. Jayne could tell him whether there was any thing in it or not worth having, for that is Mr. Jayne's official business.

And now comes up between Mr. Jayne and Phelps, Dodge & Co. this question of veracity: Messrs. Phelps, Dodge & Co.'s statement we have already heard. They assert they meant no fraud in the particular items involved in the charges against them; they meant, where they were really at a loss as to the cost of certain goods, to get as near as possible to it. The Liverpool consul sustains them in this assertion. Judge Noah Davis, then District Attorney, asserts that it was evident to him, from the outset, that this was true, and he backed up that opinion by refusing to accept a cent of the enormous sum exacted; Mr. Bliss, the present District Attorney, said that in these invoices, the total value of which was \$1,726,000, and the items on which the undervaluation occurred \$271,017.63, the actual loss to the Government was only \$1,664.68! But now comes Mr. Jayne, and says that, "in fact, they (Phelps, Dodge & Co.) have done business in New York, knowing and caring nothing for the laws, or they have deliberately and systematically disregarded and defied the laws with intent to defraud the Government."

Here is the issue made up. It is between Mr. Jayne, the special agent with an expectant percentage, and Messrs. Phelps, Dodge & Co., who he asserts have deliberately and systematically disregarded the laws with intent to defraud the Government of sixteen hundred dollars. We think the case may be safely left just there.

Meanwhile, what have "the ordinary brood of importers" to say about the laws that put them in the power of Mr. Jayne and those estimable and respectable gentlemen who supply him with information?

[*From the N. Y. EXPRESS, April 29, 1873.*]

#### THE CASE OF MESSRS. PHELPS, DODGE & CO.

From the bold statement of ex-Secretary Boutwell, telegraphed to the press throughout the country about a week since, to the

effect that the above firm had withdrawn all claim of alleged innocence of intended fraud upon the Treasury before the Treasury Department would entertain any proposed terms of compromise, on the ground that the Government did not settle with any one until the question of guilt was established, the public was led to expect serious and damaging revelations when the *quasi* official threat was made that the correspondence and facts in the case would be given in refutation of the statement of Messrs. Phelps, Dodge & Co., establishing the groundlessness of the demand made upon them.

Preparatory prejudicial comments appeared in a large number of journals, seriously reflecting upon the honor and integrity of the house in question, so much so that public expectation was greatly excited to see the promised exposures that should demolish the claimed innocence and good name of the house in question.

Well, the statement of the Government officials is out, and the most casual reader will exclaim, "the mountain has labored and brought forth a mouse."

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Not one word of admission of guilt or retraction of innocence appears, as alleged. Possibly a technical trifling undervaluation or violation of the law might be alleged, but certainly not sufficient to make a case upon which a verdict could be found. No wonder the officials one day claimed a strong case, and the next as strongly urged acceptance of the first offer made, well knowing no verdict could be expected upon the facts as left to a jury.

The offer of settlement was made to be relieved from annoyance, get possession of their books and property, and to prevent further newspaper misrepresentation. The facts demonstrated that nearly or quite every dollar paid should be refunded, as a matter of justice and equity between man and man. The case proves to be a successful effort to defraud Phelps, Dodge & Co., through a forced construction, with the aid of an informer, out of goods to the value of \$271,000.

[*From THE NATION, May 1, 1873.*]

The Treasury Department has, in self-defence, published the correspondence relating to the Phelps-Dodge affair. There is nothing new in it, except the report of the detective or "special agent," as he is called, Mr. Jayne, and that of District Attorney

Bliss. Mr. Jayne's letter is highly rhetorical, amusingly so when one remembers that his share of the sum extracted from the Dodges is \$22,583, which is very good pay in these times for one little job. In his eagerness and excitement over the prospect, he in one place indulges in a climax which ought to find a place in the "School Readers." He says he discovered in the possession of the firm "certain papers, purporting to be copies of invoices from the manufacturers of the goods," which differed from the invoices filed with the Custom-house, in regard to the prices paid, from threepence to four shillings per package; "in omitting in many cases the additional charge per package from the Custom-house invoice;" and "in omitting from the Custom-house or Consular invoice the cost of transportation from Wales, the place of delivery, to Liverpool, the place of shipment." If, he says, the same violations of law were practiced by the firm in all their importations, the loss to the Government would be about \$15,000 a year. The loss which has been proved, however, is all told only \$3000, and this, Mr. Davis says, was more than covered by the losses of the Dodges to the Government under their own rule. Mr. Davis, who was District Attorney when the proceedings began, declared his belief that no fraud was intended, in this differing from the worthy Jayne, who had no more doubt about the guilty intent than about his own existence.

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But Mr. Davis went on the bench at an early stage in the proceedings, and was succeeded by Mr. George Bliss, whose share in the prize is also \$22,583. He simply repeats the facts as they appear in evidence, expresses his belief in the frauds, but not with any great earnestness, and announces that the amount legally forfeited is \$1,726,060, but he advises the Secretary not to go before the court with his claim, "inasmuch as he believed it would be exceedingly difficult to obtain a verdict for the amount claimed," it being "so enormous in comparison with the undervaluation and fraud." The total amount of duties lost to the Government is, he says, \$1,664.68; so, like a prudent man, he urges the acceptance of the offer made by the Dodges to compromise for \$271,017.23. The anxiety of Jayne lest this offer should be refused, and he thus lose his money, is very comical. He urges its acceptance for three reasons, which he gives *seriatim* with great naïveté: (1) because "the sum would more than reimburse the Government"—

of course it did, and left a small fortune to the informer, and to Messrs. Bliss, Jayne, Arthur, and Sharpe besides; (2) because "the firm is composed of a large number of partners, and the uncertainty of human affairs, taken in connection with the unavoidable delays of the law, is a strong argument in favor of acceptance"—(a somewhat cloudy statement, but meaning apparently that Mr. Jayne takes a sombre view of the future, and hates litigation, and likes cash payments); and (3) "because the intent of the law would thus be fulfilled." In short, he wanted the thing settled up, first because it was profitable, and next because it was right. The compromise was finally made, and \$271,017.23 paid over by the Dodges. Of this the Government gets one-half, the knavish clerk who acted as informer, and who ought to be in the penitentiary, actually gets \$67,754.31, and the rest is divided between the District Attorney and the leading Custom-house officials. What a business for a civilized and Christian Government to be engaged in!

[From the BROOKLYN UNION, April 29, 1873.]

#### THE STATEMENT OF THE FIRM UNSHAKEN.

No one who has carefully read the statement of Phelps, Dodge & Co. in regard to their revenue difficulties with the Government, sustained in its material points by the letter of Judge Noah Davis, appended thereto, can well come to any other conclusion than that a gross outrage was perpetrated upon this firm by the Government officials, who squeezed two hundred and seventy-one thousand dollars out of them as a penal forfeiture. The correspondence in regard to the matter sent to the press by the Treasury Department, and yesterday published in the New York papers, furnishes no reason for changing this opinion. It simply proves—what Phelps, Dodge & Co. do not deny—that the firm had been guilty of a technical violation of our Revenue laws. The manner in which this occurred, and the circumstances thereof, they fully explained to the Government officials; and this ought to have been satisfactory without the payment of a dollar by way of penal forfeiture.

The law of 1863, under which these proceedings were commenced, aims its penalty, not at mistakes, or mere irregularities, or technical violations without the purpose of

fraud, but at *intentional* efforts to cheat the Government out of its lawful duties. It declares that—

"If any owner, consignee, or agent of any goods, etc., shall KNOWINGLY make or attempt to make an entry thereof by means of any false invoice or false certificate of a consul, etc., or of any invoice which shall not contain a true statement of all the particulars hereinbefore required, or by means of any other false or fraudulent document or paper, or of any other false or fraudulent practice or appliance whatsoever, said goods, etc., or their value shall be forfeited, etc."

This law, upon its very face, supposes guilty knowledge, fraudulent intention as the basis of fraudulent practice, as the indispensable element of the offence which it proposes to punish. Any violation which lacks this feature lacks the quality which the statute specifies, and against which aims its penalty. The statement of Phelps, Dodge & Co., not contradicted in a single fact by the published correspondence, and confirmed by the letter of Judge Davis, clearly shows that their "irregularities," or so-called violations of law, were not tainted at all with the fraudulent purpose.

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This is what Judge Davis thought when he was District Attorney, and what he said if he did his duty at the time. We have no wish to deal unjustly by the Government officials concerned in this business; yet the facts compel us to denounce their action as an outrage under the very thinnest kind of legal covering. The merchants of New York ought to hold a public meeting, and take measures to prevent the repetition of such outrages. The next Congress will have an ample occasion for an investigating committee. It ought so to simplify our customs revenue laws that importers can understand them.

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[From the BOSTON POST, May 1, 1873.]

The settlement of the allegations brought against Phelps, Dodge & Co. by the Treasury Department by no means constitutes a final disposal of the case, and all cognate cases, as between the people and the Government. The very just and searching comments of a correspondent on the subject will be perused with increased interest in another column. The writer maintains that the inculpated firm at no time recalled

their deliberate assertions of innocent intent which were contained in their first offer of compromise; that neither the informer nor the District Attorney rested their advice or action on any charge of fraudulent motive; and that Mr. Boutwell finally accepted their offer of compromise without either requiring the recall of this asseveration of theirs, or charging them with that guilt which he now insists was the only permissible basis of his final action in settlement. Thus the firm stand as free from every imputation of dishonest intention as ever. It certainly is not discoverable anywhere in the halting and badgering terms insisted on by Mr. Boutwell. The *Tribune* brings forward a theory of motive, however, which the Government may not be so ready to meet on its merits. It hints of the truth-telling propensity of Mr. Dodge during the memorable Custom-house investigation of 1871, and of this present persecution being the sequel of it. It does not hesitate to assert, in fact, that but for the offence he gave the Administration at that time, and for which even "his fidelity during the canvass" failed to compensate, "he would have been less likely to suffer from the outrage which has just been inflicted on his firm." It is no stretch of credulity whatever to believe it.

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[From the same Newspaper, April 30, 1873.]

#### PHELPS, DODGE & CO.

If the several letters that passed between Messrs. Phelps, Dodge & Co. and the Treasury officers, all of which appeared in yesterday's *Post*, are capable of yielding any special satisfaction to the mercantile community, whether in reference to the system of collecting the customs, or the confused ideas of justice and honesty that are made so apparent, the mercantile mind must have become mysteriously charmed with what it once would have rejected with disgust and indignation. The correspondence establishes nothing clearly, but leaves everything still more in a muddle. But one point is made plain, that a compromise was finally effected for the sum of \$271,017.23, which the Government agent, or informer, assured the Secretary of the Treasury would "more than reimburse the Government for any probable loss," and with the guaranteed share of which he shows that he had every personal reason to be satisfied. The case appears to have hinged entirely upon the pleasure of this informer. Propositions for a compromise were made and with-

drawn only as they seemed to suit him. The Treasury was secure in any event. The total amount of the undervaluation is less than seven thousand dollars; it is the gross value of the tainted items in the various invoices that comes up to the figures of the accepted compromise, which were quite large enough to satisfy the rapacity of any Government informer and spy. The District Attorney, whose duty it was to prosecute the case, acknowledged to the Solicitor of the Treasury that the firm's books showed no evidence of fraud, the whole of that charge of the informer being confined to certain memoranda accompanying the inculpated invoices.

[*From THE CHICAGO TRIBUNE, May 1, 1873.*]

#### THE CASE OF PHELPS, DODGE & CO.

We publish this morning the official statement of the much-talked-of case of Phelps, Dodge & Co.

Upon a review of all the facts, it is not possible to conclude that there was any intentional crime committed by this firm. The amount of duties they avoided by the enormous vouchers does not amount altogether to a sum sufficient to induce any sensible man to commit such an offence. Upon the whole amount of their importations in a year, the amount thus saved is absolutely insignificant. It would not pay the cost of the machinery necessary to carry out such a fraud. Technically, and, therefore, legally, they defrauded the revenue; but there is nothing in the facts to warrant the judgment that the fraud was systematic, deliberate, or that the firm had any knowledge that the law was violated. The case, however, shows the necessity of sweeping away from trade and commerce these pitfalls and snares which the Tariff law has prepared to catch and destroy everybody who buys or deals in imported goods.

#### THE TREASURY "HOIST WITH ITS OWN PETARD."

[*From THE TARRYTOWN ARGUS, May 3, 1873.*]

In the imbroglio of the Government with the house of Phelps, Dodge & Co., the Government has come off second best. The result is just what all well-informed and sensible people in this community expected.

The charge that an attempt had been made by that house to violate the Revenue laws and defraud the Government was felt to be incredible and monstrous. William E. Dodge is too well known in Tarrytown and its vicinity to have his own reputation or that of his house tarnished by any accusation unless it were accompanied with the most positive and overwhelming proofs. Our people know the man. They have seen his going in and out among them. They are thoroughly assured of his spotless integrity and of his broad and generous nature, as far as possible from everything like grasping meanness or dishonest dealing. And just because they know him, they would not believe him guilty of an intentional wrong in this matter, though it were charged by an army of tricky subordinates and of interested spies and informers as long as from here to sunset. The faith of the people has been fully justified by the result.

Phelps, Dodge & Co. have published the facts to the world, accompanied with the statement of Judge Davis, who was the Government's District Attorney when the proceedings against the house began, that in his belief there was no shadow of fraudulent intent on the part of the firm. The Government has also responded to this publication by giving its version of the story and such parts of the correspondence as would tend to sustain it in its course. But, curiously enough, the statements of Phelps, Dodge & Co., which carried their own voucher on their face, are confirmed and rendered all the more impressive by the very documents brought forward against them by the other side. So that "the engineer is hoist with his own petard."

[*From THE NEW YORK TRIBUNE.*]

A correspondent wants to know the names of the Federal office-holders who shared in the plunder of Phelps, Dodge & Co. By law, the money received from compromises and forfeitures in revenue cases is divided as follows: One-half to the Government; one-quarter to the informer; and the remaining quarter to the Collector, Surveyor, and Naval Officer, in equal parts. Each of these three officials consequently gets in the present case \$22,583. It is a dirty, disreputable business, and our Government ought to be ashamed of itself.

## THE POWER OF THE POLITICIANS.

*[From an Editorial in THE NEW YORK TRIBUNE,  
May 9, 1873.]*

Here is a case nearer home—under our very eyes—a case that illustrates the helplessness of the people and the subjection of our commercial and business interests to the despotic power of as bad a gang of politicians as ever prostituted the scales of justice to dividing loot. A great commercial house, one of the first in the country, with an established character and unsullied reputation, of large wealth and most extensive business relations throughout the world, was taken by the throat and robbed of over a quarter of a million of dollars. Robbery is a hard word. Were the names of all the men who shared in the proceeds of this transaction published, it would seem still harder, for they are dainty gentlemen, with nothing of the Robin Hood or Friar Tuck about them; scholarly persons, who pluck by precedents and pinch for penalties; who only seek to vindicate law and save the Government from loss; who handle currency with gloved finger-tips, and if they divide with spies and informers, do it with a lofty grace and enough of indirectness to deodorize the plunder. But robbery is the name for it, whoever carried away the ill-gotten profits, or by whatever process it was divided. Look a moment at the facts. Not the *ex parte* statements of the victims, but the facts admitted by the informers and their partners, and published as an angry answer to the explanation offered by the firm. In five years this firm had imported goods to the value of forty millions of dollars. Upon those imports they had paid the United States Government eight million dollars in duties. By a system of espionage which would be a disgrace to any country, it was discovered that upon these five years' importations of forty millions there had been overvaluations of some and undervaluations of other articles—the latter to the amount of \$6,680, upon which there was due the Government the sum of \$1,660 (one thousand six hundred and sixty dollars). And the prosecuting officer of the Government says publicly that he does not believe the idea of defrauding the Government had ever entered the mind of any member of the firm. What does an Administration that has pardoned more defaulters, compromised at a loss to Gov-

ernment more frauds and embezzlements and thefts than any three of its predecessors, whose habit of appointing rogues to office is only less fixed and pronounced than that of pardoning them when caught and convicted of crime—an Administration of a party whose proudest boast is that it has survived a deluge of investigations, and whose shame it is that it had to pack the committees that made them—what does such an Administration, reeking with the stench of offences that run up and down the scale from bribery to perjury, do with this case, in which by an innocent mistake the Government has lost the paltry sum of sixteen hundred dollars in transactions covering forty millions? What did it do? Well, what should it do? What would you expect such an Administration to do? It reached out and took Phelps, Dodge & Co. by the throat as it might take any other firm or any other man, and held them till they disgorged \$140,500 to a ring of politicians and \$130,500 to the Government; and the characterless spies and informers who got the money put on airs of virtue and bragged that they had vindicated the law against Phelps, Dodge & Co., and punished them for fraud.

Does anybody ask why the authorities that habitually compound felonies upon terms that make felony profitable, should exact from innocent persons over a quarter of a million dollars for a mistake by which the Government lost only sixteen hundred? Follow the money paid over and see into whose hands it goes to be divided. They wanted the money. They got it. They can to-day, as they have heretofore, read the correspondence of any man or firm whose letters pass through the mails. They may seize any man's books and accounts. They may put an end to his business by obstruction and interference. Commerce and trade are at their mercy. It is n't worth while to get excited about it. It is a mere abstraction. Phelps, Dodge & Co. are rich and can afford it. The Government people are gorged with their \$140,000, and it is n't likely they'll pick up anybody else at present. We are safe.

And yet, perhaps, by and by the people will find it worth their while to turn this matter over a little thoughtfully and see what sort of men these are who run the Government, and what sort of Government they are giving us.

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ACTION OF THE  
NEW YORK  
CHAMBER OF COMMERCE.

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## THE CHAMBER OF COMMERCE.

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### Proceedings at the Annual Meeting, May 1st, 1873.

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#### PHELPS, DODGE & CO. SUSTAINED.

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##### WILLIAM E. DODGE RE-ELECTED TO THE PRESIDENCY.

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*[From THE NEW YORK TRIBUNE, May 2, 1873.]*

The Chamber of Commerce held its 105th annual meeting yesterday, William E. Dodge presiding.

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Mr. Dodge called Mr. Sturges to the chair, and the Nominating Committee reported the selections for officers for the ensuing year. They were duly balloted for and elected, as follows :

President, William E. Dodge; First Vice-President, George Oddyke; Second Vice-President, William M. Vermilye; Third Vice-President, Samuel D. Babcock; Fourth Vice-President, Solon Humphreys; Treasurer, Francis S. Lathrop; Secretary, George Wilson.

Executive Committee—A. A. Low, Chairman; Charles H. Russell, John C. Green, James M. Brown, R. Warren Weston, William H. Fogg, Jackson S. Schultz, Samuel B. Ruggles, D. Willis James, Paul N. Spofford, John Taylor Johnston, Elliot C. Cowdin, Sinclair Tousey.

Mr. Dodge was again called to the chair, and responded feelingly, as follows :

GENTLEMEN OF THE CHAMBER : I thank you for this renewed evidence of your confidence. It had been my intention to have declined a nomination this year had it been tendered, as other duties demanded my attention, but the kind intimation of your Nominating Committee led me, in the peculiar position in which I

have been placed before the public during the past few months, to allow my name to be again presented; and your action at this time is the more gratifying as it gives assurance of your continued confidence. It has been not a little trying to be publicly accused of an attempt to defraud the Government, while for the moment we were not prepared to explain our position, and yet having a perfect consciousness of having done nothing to warrant the charges made against us. Having been actively engaged in business in this city for nearly a half century, without ever having my integrity called in question, it was mortifying in the extreme to see newspapers from day to day placing my firm before the public in such a position as left the impression that we had been for years engaged in a systematic attempt to defraud the revenue. I may be pardoned for detaining you for a moment to say that if this had been simply a matter between ourselves and the Government it could at once have been adjusted without any reflection on our mercantile reputation; but the revenue laws, as at present administered, offer such a premium for officials, that even the ruin of a merchant's standing is not to be considered when there is a shadow of a chance to secure money even by making the better appear the worse. In our case we found the several

parties who were to share in whatever they could obtain, had secured the services of some half dozen lawyers, who were devoting all their efforts to secure their end, even at the cost of our good name. Fearful charges were made in public and in private so as to intimidate us, while we were denied the proof which the Government officials assumed to hold by the possession of our books and papers. Our public statement will have explained more fully our reasons for offering in settlement for what we have always claimed as only technical errors, a sum which, in comparison with all they have been able to prove, was many hundred times in excess. I will only add that since we have fully understood the case we have continued to regret ever having paid a dollar. [Applause.]

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Geo. W. Dow offered the following resolution:

*Whereas*, Certain resolutions touching the Revenue or Tariff laws of this country were introduced into this Chamber on the 7th day of March, 1872, and referred to Committee No. 4, with power to add to its numbers, for a full and careful consideration and report; and whereas, it is understood that said Committee deemed it inexpedient at that time to go into the matter in consequence of the excitement attending the Presidential election, and no report has yet been made; and whereas, this subject is believed to be of the highest importance, not only to the mercantile community, but also to our country at large; therefore,

*Resolved*, That Committee No. 4 be requested to give earnest attention to the resolutions above named, and also to examine the laws relating to penalties and additional duties as now imposed, and to recommend such alterations of the same as will protect the honest importer from the forfeitures and fines which should fall upon those only who are dishonest and unscrupulous; and said Committee is hereby requested to make its report by or before the 4th day of December next.

Mr. Dow then spoke of the inconsistencies of the tariff laws, and the difficulty which honest importers had in interpreting them. He denounced a system which classed honest importers and swindlers in the same category, and felt that he expressed the general senti-

ment of the Chamber when he declared his unshaken faith in the integrity and honor of William E. Dodge and the house of Phelps, Dodge & Co. [Applause.]

Mr. Hewitt rose to second the resolutions, and said that there were two objections to the laws. One was the crude, imperfect and improper laws themselves, and the other the character of the officials who executed them. He eulogized the house of Phelps, Dodge & Co., characterizing it as one of the most illustrious in the world. The resolutions were then unanimously adopted.

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#### THE ANNUAL DINNER.

The annual dinner of the Chamber of Commerce of New York was given at Delmonico's last evening. The hour for the dinner was 7:30; and when the guests were invited to enter the dining-room, the ante-room was too full for comfort. Among the prominent members of the Chamber who were present were: William E. Dodge, President; A. A. Low, Samuel D. Babcock, Geo. Opdyke, Wm. H. Fogg, J. Pierpont Morgan, R. Warren Weston, John D. Jones, Joseph W. Drexel, Henry F. Spaulding, William Borden, Chas. L. Tiffany, Charles E. Beebe, S. B. Chittenden, Jonathan Sturges, Jeremiah P. Robinson, James L. Worth, Charles G. Landon, Charles Butler, Abram S. Hewitt, Samuel B. Ruggles, D. Henry Haight, George W. Lane, Orestes Cleveland, Francis Baker, Simon de Visser, Wm. M. Vermilye, Jacob Wendell, Joseph Hyde Sparks, Ambrose Snow, Francis S. Lathrop, James M. Brown, J. Seligman, Wm. H. Guion, James S. T. Stranahan, L. B. Wyman, Wm. H. Webb, Paul N. Spofford, Parker Handy, Morris K. Jesup, Chas. C. Duncan, Wm. E. Dodge, Jr., George T. Hope, Frederick S. Winston, and George Wilson, Secretary.

Among those who were present as guests of the Chamber of Commerce were: William M. Evarts, Charles O'Conor, Gen. Joseph R. Hawley (Hartford), the Rev. William Adams, D. D., the Rev. Roswell D. Hitchcock, D. D., the Rev. Theodore L. Cuyler, D. D., Gen. Winfield S. Hancock, David M. Stone, Wirt

Dexter, the Hon. C. C. Childs of Philadelphia, the Hon. J. M. Van Cott, John Jay Knox, Richard S. Evans of London, Judge Charles P. Daly, the Hon. John R. Brady, Dr. Henry R. Lindeman, Prof. Joseph Henry, Edward M. Archibald, the Hon. Stewart L. Woodford, Commodore J. H. Strong, the Hon. David B. Mellish, the Hon. Fernando Wood, Johannes Rösing, the Hon. John E. Devlin, the Rev. Alfred P. Putnam, D. D., the Hon. Wm. J. McAlpine, the Rev. E. H. Chapin, D. D., John W. Simonton, Peter Williams, the Hon. David A. Wells, Waldemar de Bodisco, C. G. for Russia, the Hon. Samuel J. Tilden, Hipolito de Uriarte, and T. A. A. Havemeyer.

About 150 persons were present. The dining hall was decorated with the arms of Great Britain, Austria, the United States, and New-York, appropriately festooned with flags. A long table was placed along one side of the hall, at which were seated William E. Dodge, President of the Chamber, the Hon. William M. Evarts, the Rev. Dr. Adams, the Hon. Samuel J. Tilden, ex-Judge Joshua M. Van Cott, George Odyke, the Rev. Dr. Putnam, Chief-Justice Daly, and others.

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At the close of the dinner, Mr. Dodge introduced the first toast and speaker in the following brief speech:

SPEECH OF WM. E. DODGE.

GENTLEMEN: We are met on this anniversary evening in this social way in much larger numbers than can usually attend on our regular monthly meetings. Many of our friends who are unable amid the pressure of business to meet with us, and yet feel a deep interest in the Chamber, are enabled at these annual dinners to renew their acquaintance with the members and take part in the discussions that may come before us. There are important interests connected with the prosperity of our commerce which should command the careful consideration of the Chamber, but which can hardly be attempted during our hurried meetings at mid-day. The question of rapid transit, of wharfs and piers, better

facilities for shipping and receiving freight by our railroads, the enlargement and cheapening of canal transportation, the use of steam for propelling the boats, the great question now agitating the country how to facilitate and cheapen the carriage of produce from the West to the seaboard, and particularly to bring it to our city, the encouragement necessary to secure American steamships, and the great questions of finance and the currency, all these demand the most careful consideration, and we can but hope that by these evening gatherings a new interest will be awakened that will secure a larger attendance at our regular meetings. But I did not intend myself to occupy any time, and will at once proceed to present the first regular toast of the evening.

Mr. Dodge then gave the first toast: "Commerce, the great disseminator of Christian civilization," and called upon the Rev. Dr. Adams, who responded.

SPEECH OF DR. ADAMS.

[Reported by THE N. Y. SUN.]

The reverend gentleman described commerce as a powerful agent in diffusing Christianity and bringing nations together. "What grand lessons of Christianity," he said, "do you learn on the docks and in the Custom-House?"

Here the doctor was interrupted by audible smiles, and a smile gradually overspread his own placid countenance. He continued: "I see an incredulous smile on the face of a friend." [Hearty laughter.]

"It compels me to say in explanation of the word, that I mentioned it as relating to that vast variety of commodities representing the different nations of the globe supposed to pass through the Custom House. I did not speak of the system of man-traps [applause]—not of the place where fattened depredators grow rich on the spoils which they get within reach of their tentaculars. The object of civil government is not to hurt but to help, not to oppress but to protect. I wonder that the merchants of this metropolis do not spring to their feet in protest against the atrocious idea that the administration of the government is

not to be regulated by obvious equity, but by literal technicalities. [Applause.] Your voices should be raised like the sound of many waters above partisan clamor in vindication of your rights and of justice. The publican in the Scripture offered to restore what he had wrongfully taken fourfold. Here an upright citizen is required to pay for a breach of technicality one hundred fold. Pardon this unexpected parenthesis. Distinguished merit will always rise superior to opposition, and draw lustre from conspiracy and reproach."

SPEECH OF MR. A. A. LOW.

(*Tribune Report.*)

The third toast was :

"Chambers of Commerce—the best conservators of true commercial principles, and the most efficient organs through which merchants may exert their proper influence upon commercial legislation."

This was responded to by A. A. Low.

Mr. Low said that in union there was strength, in a multitude of counselors there was wisdom, and this would seem to be about enough for this occasion. The Chamber had a multitude of men, representatives of this great commercial emporium. They were the men who dominated public sentiment in matters of commerce, and ought to do so. It was their duty to speak when flagrant wrongs were condoned by improper compromises and honest merchants were made to pay penalties one hundred times in amount of the offense which was claimed to have been committed. [Applause.] It was doubtless true that immense wrongs had been committed against the United States, involving losses to the Government of many hundreds of thousands, and these were compromised by the abandonment of a just claim for one-half the amount, while an honest man is compelled to pay one hundred times the amount claimed to be lost by some technical irregularity. [Applause.]

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## COMMENTS OF THE PRESS.

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[*From THE N. Y. TRIBUNE, May 2, 1873.*]

The New York Chamber of Commerce, a time-honored and influential institution, yesterday entered its weighty protest against the present administration of the Revenue laws. That protest took shape in the unanimous re-election of Mr. Wm. E. Dodge to the Presidency of the Chamber, and the passage of a resolution instructing one of its standing committees immediately to examine the laws relating to Custom-house seizure, with a view to their amendment by the next session of Congress.

[*From THE NATION, May 8, 1873.*]

At the annual meeting of the Chamber of Commerce on Thursday of last week, Mr. Wm. E. Dodge was re-elected President. This

signal mark of confidence the Chamber followed up by heartily applauding speeches in which unshaken faith in the integrity and honor of his house was expressed, and by unanimously adopting resolutions instructing a committee "to examine the laws relating to penalties and additional duties as now imposed, and to recommend such alterations of the same as will protect the honest importer from the forfeitures and fines which should fall only upon those who are dishonest and unscrupulous." Mr. Dodge himself, in acknowledging the honor conferred upon him, stated that except for the attitude in which his firm had been placed by the Government he should have declined a renomination. Referring to the excessive payment in settlement made by Phelps, Dodge & Co., he said that since they had fully understood the case, they regretted ever having paid a dollar; and this,

as we have before had occasion to remark, is the only regret which the public can entertain on their account. While this rebuke to the Government for its outrageous treatment of one of the half-dozen representative firms of the country was being offered by the leading merchants of its chief city, at Vienna the opening of the Exposition on the same day gave equal occasion to Americans to blush for the care which the Government bestows on the commercial and industrial interests of the people, whether at home or abroad.

[*From THE N. Y. OBSERVER, May 8, 1873.*]

#### MR. DODGE'S VINDICATION.

We do not know in what way a more complete vindication of the good name of Hon. Wm. E. Dodge could be made than that which he received on Thursday last. The high standing of the New York Chamber of Commerce is well known. There is not body of more honorable merchants in the world than the men who compose and control this Board. Mr. Dodge has for some time past been President of the Chamber, and in view of the recent difficulties which his firm has had with the Government, the annual meeting for the election of officers was anticipated with no little interest by Mr. Dodge's friends. He himself had decided to decline being a candidate for re-election, but the nominating committee urged him to allow his name to be used, and at the regular annual meeting he was unanimously re-elected President for the coming year. We regard this as the strongest endorsement of Mr. Dodge and of the firm of Phelps, Dodge & Co., that could be made by the merchants of New York, with many of whom the house has been in intercourse for nearly half a century.

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We heartily rejoice in this most satisfactory vindication of one who has been held in such high esteem, and who has occupied so conspicuous and influential a position in the Church and in the country. The vindication is all the more satisfactory coming from such a source, from men of business, whose motives in paying this tribute to the honorable standing of one of their own number cannot be called in question.

There is one more act of justice due the firm of Phelps, Dodge & Co. It is the restitution of the money which has been taken from them, by legal process it is true, but by a species of black-mailing that in all transactions between man and man would fail to be regarded as honest.

[*From THE ALBANY ARGUS, May 8, 1873.*]

#### THE CHAMBER OF COMMERCE.

The action of the New York Chamber of Commerce, in re-electing Wm. E. Dodge as its President, is a complete vindication of the firm of Phelps, Dodge & Co., and a merited rebuke of the Federal blackmailers who robbed the firm of \$271,000 as penalty for unintentional frauds amounting to less than \$2,000. We have heretofore shown that the Government had the right to remit the entire penalty, if it could assume to compromise the affair at all. The law is specific. Under its terms the firm of Phelps, Dodge & Co. were liable in the sum of one million of dollars, if liable at all; and the Government had the power to remit the entire amount, if satisfied that fraud was not intended. That no fraud was intended would seem to be plain from the small amount conceded to have been due, the total amount of duties lost being admitted by the Government to have been only \$1,500. It is not to be supposed that the firm deliberately perpetrated any such petit larceny operation; and if it had not been that the amount received was to be divided among the officials, not one cent would have been claimed. The amount to which the Treasury was entitled was willingly conceded by the avaricious persecutors of the firm; but they wanted their own share too badly to concede a cent of that. Of the sum thus villainously extorted, \$180,000 went to the blackmailers, \$11,000 was paid as costs, and the Government received the remainder.

The Chamber of Commerce not only vindicates the outraged firm, but it prepares for aggressive war. A committee has been appointed to consider the question of radically modifying the revenue or tariff laws, and also to examine the laws relating to penalties and additional duties as now imposed, and to recommend such alterations of the same as will protect the honest importer from the forfeitures and fines which should fall only upon those who are dishonest and unscrupulous.

There is no danger that this movement will result too greatly to the advantage of the importer. Congress does not seem disposed to look with favor even upon the rights of consumers as against monopolists, and much less is it likely to give the importers any undue advantage. The revenue laws are now unnecessarily cumbersome, fearfully oppressive and convenient instruments for blackmail operations. These evils must be remedied. Agitation to that end will be the leading question in the next Congress. It is to be hoped that weak subterfuges and shuffling compromises will be no longer tolerated. There is a wide margin between the exorbitant and extortion-

ate tariff under which the country is now groaning, and the ruined industries which the monopolists pretend will follow from any change.

[*From THE BALTIMORE INQUIRER, May 6, 1873.*]

The re-election of Mr. Wm. E. Dodge to the Presidency of the New York Chamber of Commerce, is the most emphatic condemnation of the late action of the Treasury Department in the matter of the alleged frauds upon the revenue by Phelps, Dodge & Co. that any public body could have given. It is impossible to suppose that an influential body of merchants like the Chamber of Commerce of New York city, would select for its presiding officer the head of a house tainted with the dishonesty and fraud implied in the charges.

[*From THE SPRINGFIELD REPUBLICAN, May 3, 1873.*]

The case of Phelps, Dodge & Co. is in everybody's mind. We shall feel amply compensated for this great scandal, if it arouses the merchants of New York to a sense of their political responsibilities. There are indications of such a result. The New York Chamber of Commerce, at their annual meeting Thursday night, re-elected Wm. E. Dodge President, and took pains to give this action the air of a rebuke to the Government.

[*From THE TARRYTOWN ARGUS, May 3, 1873.*]

There is but one feeling in the public mind. It is that the Government has been guilty of an outrage, and ought to send back the money with an humble apology. We are glad to see that the New York Chamber of Commerce rebuked the Government on Thursday by unanimously re-electing Mr. Dodge as its President.

[*From THE JANESEVILLE (Wis.) GAZETTE.*]

Hon. Wm. E. Dodge, senior member of the firm of Phelps, Dodge & Co., which has lately had difficulty with the Treasury Department, was yesterday unanimously elected President of the New York Chamber of Commerce. This action, it is understood, has been adopted to express the conviction of the merchants of New York that the firm was innocent of the charges preferred against it by the revenue officers of the Government.

[*From THE AGE, (Houston, Texas,) May 3, 1873.*]

The re-election of Mr. Dodge, on Thursday, to be President of the New York Chamber of

Commerce, is of itself a very powerful vindication. It is a declaration by the leading business men of the great metropolis, who certainly know and appreciate fully the circumstances in the case, that confidence in his moral integrity and commercial honor is unshaken.

[*From THE BOSTON GAZETTE, May 4, 1873.*]

The proceedings against Phelps, Dodge & Co., of New York, for defrauding the revenue, are such as should attract universal attention. There is no evidence that this firm, which, as is generally known, is one of the most reputable, as well as one of the wealthiest, in the country, was aware that there was any wrong upon the Government in its transactions. The case, on its face, appears quite palpably one of oversight only. The whole amount of which the Government was deprived was less than two thousand dollars. Yet advantage was taken of the technicalities of the law to attempt the forfeiture of a million dollars in value of goods, and the case was finally settled by exacting a fine of \$271,000! As a proof that the merchants of New York believe that no wrong was intended, they have since this transaction elected Mr. Wm. E. Dodge, one of the partners of the firm, as President of the Chamber of Commerce. The leeches connected with the Custom House of New York are at the bottom of this scandalous levy upon honorable merchants. They have received a large share of the forfeit-money. It may be asked why did not Phelps, Dodge & Co. appeal to a jury. The probability is that they feared the enmity of the Custom House too much to do this thing. There is power in that body to inconvenience importers to an enormous extent, and it is often freely exercised. Mr. A. T. Stewart, when he gave money to aid the Liberal movement last Summer, made it a stipulation that his action should not be known, on the ground that he could not afford to have the Custom House people unfriendly to him.

[*From THE BOSTON POST, May 5, 1873.*]

#### REVENUE SPY SYSTEM.

In his reply to the compliment of a re-election to the Presidency of the New York Chamber of Commerce, Mr. Wm. E. Dodge laid all the troubles that had befallen his firm upon the administration of the revenue laws, which offers such a premium to officials that a merchant's standing is not considered in comparison with the opportunity to make money out of him. Mr. Dodge referred also to the half

dozen or more lawyers who were all zealously working against his house in company with the informers and officials, to secure their end even at the cost of its mercantile standing of half a century. He especially regretted that he had ever consented to pay a dollar in compromise, when he now sees that his duty was to contest the case to the last. But this prevalent reluctance among merchants to be even temporarily clouded with lawsuits that are based on allegations of fraud is the strong point which the official informer seizes upon. Detective Jayne wrote to the Treasury in reference to the Phelps, Dodge & Co. case, that the Government was sure to get more by compromising than by going to court; and District Attorney Bliss did not hesitate to forward his opinion to the same effect to Washington. The object, then, of the informer, is only money; and it is altogether too plain that the system set on foot by the revenue laws is precisely adapted to secure it. Protection to the revenue is of secondary concern. If that was the object, no such case as this of Phelps,

Dodge & Co. could occur; for no charge would ever be compromised where the parties accused were guilty, and money would never be taken from them where it could be proved that they were innocent.

The whole thing is a network of chicanery, espionage, double-dealing and rapacity; a series of revenue traps and pitfalls, to involve unsuspecting firms with technical guilt, and force them to offer round sums for official greed in preference to submitting to an exposure that is supposed in any event to carry more or less infection. Phelps, Dodge & Co. undoubtedly see by this time that it would have been morally better for them to have proved their innocent intent before a court of law, than to have paid over more than a quarter of a million to the officials and received the brand from Mr. Boutwell afterwards. If this experience and example shall avail to rouse the mercantile community to its duty in respect to the revenue laws, it will not be wholly a subject of regret.



## CONCLUDING ARTICLES.



## CONCLUDING ARTICLES.

[From *THE NATION*, May 8, 1873.]

### THE CONTRIBUTIONS OF THE GOVERNMENT TO PUBLIC MORALS.

We discussed one aspect of the Phelps-Dodge affair last week—the economical one. The matter ought not to pass from the public mind, however, without some notice of another and still graver aspect of it—the moral one; the importance of which is increased by the spectacle of the frauds, defalcations, breaches of trust, venality, and, in short, general loosening of the bonds of honesty and fidelity which meets the eye in every direction, and over which patriots and moralists are lamenting so deeply. It is now and has long been generally conceded that governments owe something more to the cause of good morals than legislation against vice. They not only provide penalties for offences, but they refuse the aid of the judicial machinery for the enforcement of contracts which are *contra bonos mores*—or “against public policy,” as the lawyers say. More than this, they are expected to refrain from making money by pandering to vicious tastes or habits.

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What has all this got to do with the Phelps-Dodge affair? Much, as we think we can show. The legal proceeding by which our Government punishes infractions of the Revenue laws is, in form, a civil one. On its face, it is a civil suit for an amount of damages previously fixed by the statute. But, in reality, it is a criminal proceeding. The evidence to sustain it is procured by the criminal process of searches and seizures. The amount of damages recoverable bears no moral or mathematical relation to the injury sustained. It is, in all respects, a penalty, and may be a tremendous penalty, even from a pecuniary point of view; as when in the Phelps-Dodge case a million and a half of dollars was claimed, and over a quarter of a million actually extorted, by way of compensation for the loss to the revenue of little over sixteen hundred dollars. Not only, however, are the damages a real penalty, but the suit is, from its very commencement, an assault on character of the most terrible kind. Private individuals sue each other for all sorts of reasons—good, bad, and indifferent—and the public pays little heed to the plaintiff's story until it has heard the defendant's. But when the Government pursues a man in the courts, it raises in the

popular mind a strong presumption of guilt against him. There is a traditional prejudice that such a suit, being undertaken on public grounds and in the public interest, cannot be dictated by private malignity or passion, and must have an array of facts behind it; so that, when the District Attorney files his bill against a merchant to punish a fraud on the revenue, and the “special agent” seizes on his books and papers, and the telegraph spreads the news over the country, the fair fame of a lifetime often vanishes in a moment. The man's character is damaged to an extent which no subsequent refutation or vindication can wholly cure, because such are the intricacy and obscurity of our Revenue laws that, even if the facts were clear of all suspicion, the defence must, from the nature of the case, be dry and tedious reading, while the charge can be contained in two lines of a spicy despatch.

Now, no man is arraigned on a criminal charge without a preliminary investigation before an impartial tribunal. He is taken before a magistrate who has no personal interest in his acquittal or conviction, before a grand jury who are indifferent also, and before a district attorney who, at worst, is animated in the prosecution by nothing stronger than professional pride. It is only after all these have agreed that there is fair ground for trying him, that he is, as the law says, “put in jeopardy” before a court. When, however, the Treasury directs the prosecution of a merchant, entailing possibly the ruin of his business and of his reputation, it acts on the report of two persons, who both have a strong pecuniary interest in his conviction—that is, it decides to prosecute him, as it were, on the commitment of a magistrate who will make thousands of dollars by having him found guilty; and on the presentment of a grand jury who, if he is found guilty, will be allowed to divide between them a considerable portion of his assets. But this is not the whole nor the worst. In order to procure the information on which these prosecutions are founded, the Government does not employ policemen and pay them itself for their services, as in the case of other breaches of the law, and keep up among them by discipline a sense of honor and self-respect and of regard for the rights of their fellow-citizens. On the contrary, it enlists in its service a class of detectives whose zeal is stimulated not by the prospect of promotion, or by public spirit,

or any of the honorable incentives to exertion, but by the prospect of sharing in a division of the criminal's property. Even if the experience of all nations and ages as to the effect of this mode of reward on police agents were not known to us, we should only need very little knowledge of human nature to predict the result of it on the morals of the officer and on the peace and welfare of persons exposed to his attacks. It is a common and justifiable practice of governments to offer rewards to educe evidence likely to lead to the conviction of the perpetrators of crimes already committed. But to offer large rewards to persons who will bring accusations and make them good, is a well-recognized offence against public welfare, to which only the basest governments in the worst times have ever resorted, because it not only breeds one of the foulest classes of men, but places all good citizens at their mercy.

The detectives employed by our Government, and whom it dignifies with the name of "Special Agents," are constantly trying to procure materials for charges, and in order to do so are constantly endeavoring to put themselves in communication with "informers," with whom they afterwards share the enormous reward. It is well known that it is not uncommon to use clerks as spies on their employers; or in other words, to induce young men to engage in one of the lowest forms of hypocrisy and perfidy of which a man can be guilty, and the one which most rapidly and surely eats out the very roots of manliness, honesty, and self-respect. We may depend upon it, anybody who has ever taken Custom-house pay as a spy, issues from his employer's counting-house in just that state of mind which makes slow and lawful gains irksome, and chances for fraud and defalcation welcome. In the Phelps-Dodge case, a confidential clerk first sells his employer's business secrets to business rivals, and spends his nights in helping them to ransack their books and papers. When he is detected and prosecuted and escapes through a technicality, far from flying, he puts himself in communication with the representatives of the United States Government, who welcome him as a valued coadjutor, and the result is that by this one stroke of rascality he walks off with nearly \$70,000, or, in other words, a larger fortune than usually rewards a lifetime of honest and successful toil. It requires no great effort of the imagination to figure to one's self the effect of this man's performance on the thousands of youth who are serving in a

fiduciary capacity in this city, and to whom long hours and small salaries are hard to bear. That he is a thief, a cheat, a liar, a hypocrite, a monster of ingratitude and baseness, is all hidden under the fact that he has assisted the worthy Jayne in bringing a charge of having defrauded the revenue to the extent of sixteen hundred dollars against a house whose importations are every year worth six millions, and the income of whose partners is counted by hundreds of thousands.

We may depend upon it that as long as the national Government lends its sanction to speculations of this kind, the fountain of corruption and dishonesty will not dry up or cease to spread. There is no way, we are glad to say, of keeping rascality confined to "the politicians." We cannot make politics a lazarus-house, and prevent the contamination from reaching trade and commerce. Perhaps one of the alarming signs of the times was that little burst of janissary's insolence in which this detective, Jayne, spoke in his "report" to Mr. Boutwell of the merchants of New York as "the ordinary brood of importers," evidently looking at them much as one of Louis Fourteenth's dragoons looked at peasants, or a Mameluke looked at a rayah. When a person of his calling and position indulges in remarks of this kind to his official superior about the traders of the principal American city, and the superior has the audacity to publish the letter, we may be sure it is high time for the axe to be laid at the root of the tree. The worst charge that can be made against the house of Phelps, Dodge & Co. is that, having wealth and character, they did not stand firmly in the forefront of the battle which undoubtedly must be fought out before the great Custom-house nuisance is abated, and the lesson finally taught that Government exists for the convenience and aid of the citizen, and not for his confusion and annoyance.

[From THE CHICAGO DAILY TRIBUNE, May 7, 1873.]

#### BLACKMAILING AND THE SPY BUSINESS.

When the United States Government goes into the blackmailing business, it is very likely to succeed; but it seldom happens that a single firm will pay \$271,023 as a penalty for the non-payment of \$1,664 of customs duties on a few scattering packages of tin plates. That Messrs. Phelps, Dodge & Co. allowed themselves to be mulcted in

this enormous sum for so trivial an error is almost as surprising as that the Government exacted it from them. A more flagrant outrage was never committed or submitted to in any country, civilized or barbarous. That Messrs. Phelps, Dodge & Co. did submit to it can only be accounted for on the score of extreme terror of the power and unscrupulousness arrayed against them. "Anything to be rid of these dogs," was probably their despairing cry as they handed over the cash. And yet they were not justified in purchasing their peace at such a price, or purchasing it at all. They ought to have gone into court and shown up the whole conspiracy, beginning with a false-hearted clerk, running the gamut of Custom-house blacklegs, spies, and District Attorneys, and ending with a Secretary of the Treasury who had no more sense of decency than to aid and abet the blackmailing tribe in their villainous operation. Mr. Boutwell has thus put a blister on his own reputation, but none on that of Phelps, Dodge & Co. No petit jury on earth would have given a verdict against them for more than the sum of unpaid duties, while any grand jury would have felt moved to indict the rascally gang of conspirators who were persecuting them. Whatever loss of reputation the firm may have temporarily suffered, must be attributed to their payment of the enormous blackmail levied upon them. If they had stood up and fought from the beginning, there would have been no suspicion of their guilt in the minds of the public. The presumptions would have been all the other way.

The clerk who consented to betray his employers, after having enjoyed their confidence and assistance, and took advantage of technical informalities to earn an informer's fees at the hands of the Government, instead of reporting the irregularities he had discovered to the firm, is, without doubt, a repulsive object, with whom no decent men will care to come in contact. So are the employes of the Government who, under the name of detectives, bribe clerks to betray the confidence intrusted to them, suggest ways and means for prying into private business, entering business houses after dark, and institute secret censorship over correspondence, books, and papers. But we must go back of these vampires to find the source of these disgraceful practices. It is in a Government that exacts a fine of \$271,023 for unintentional irregularities that led to a loss of revenue of only \$1,664, that the main cause of the spy system is to be discovered. The exaction of

this enormously disproportionate fine was not intended as a punishment for crimes, because the punishment would be excessive, and therefore apt to defeat itself in the end. The sum of \$271,023 was exacted at the urgent solicitation of the spies and informers, and with the purpose of dividing among them as large a sum as possible, in order to encourage similar outrages in the future. This doctrine is a vital part of the spy system. It is necessary to appeal to the greed for gain, which is the most conspicuous incentive to corrupt and disgraceful practices, in order to induce men to soil their hands with business that renders them repulsive to decent men forever after.

The American Government has at last gone systematically into the spy business. It was put in active operation last summer and fall in a political way. The usurpation of authority on the part of United States Supervisors and Deputy Marshals, under the protection of United States Commissioner Davenport, of New York, was part and parcel of the general system. The right to enter men's houses, tamper with their employes, bribe their servant-girls, browbeat their wives, and exercise terrorism over their families, under the name of the law, in order to ascertain their political preferences, was only the prelude for bolder and more profitable operations. A United States law of recent enactment authorizes like proceedings with the purpose of ascertaining the condition of private business affairs; under pretence of ascertaining whether any moneys due to the United States at any former time have been unlawfully withheld. It cannot fail to produce a race of creatures as vile and vicious as the harpies of fable. Multitudinous branches of infamy will grow out of it. The principle that underlies the law and the practice will infest all kinds of business and the relations between man and man; it will destroy all commercial confidence, and render blackmailing a fine art, in which the vilest and the dirtiest will be the adepts.

The *Nation* strikes at the root of this rank growth when it repeats an expression made by ex-Secretary of the Treasury Boutwell, who said that he regarded "the interests of the Government and the interests of the merchants as diametrically opposite." So long as this idea prevails, just so long will the spy system be sustained and encouraged. So long as the Government continues the policy of exacting tolls for the benefit of privileged classes; of collecting revenue by strained and artificial processes; of confusing the laws in such manner as to

render them difficult of comprehension ; and of combining the interests of a political party with every branch of the administration of Government, just so long will the interests of the Government and the interests of merchants be "diametrically opposite," and spies and informers abound in all the land. The existence and work of these people will act as important agents in that impending revolution which Carl Schurz pictured in his speech on the proposed expulsion of Caldwell from the United States Senate, in which he reminded his auditors of the historic lesson that corruption must be summarily put down by the people, or it will bring them to speedy and inevitable ruin.

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[*From the ANGLO-AMERICAN TIMES, London, May 17, 1873.*]

#### A TALE OF MERCANTILE LIFE IN NEW YORK.

The story of Messrs. Phelps, Dodge & Co. would be of interest to manufacturers and dealers with the United States under any circumstances, but in itself it forms so curious a tale, that it can be read with instruction by all. We must preface what we are about to tell by stating that the subject has been the cause of furious newspaper discussion, official discussion, and mercantile discussion ; the majority of the papers assailing the firm in unmeasured terms, which, by the way, is conspicuous from its high rank and long standing, as well as from the record of its senior partner, one of the most esteemed citizens of the Union. Last summer a contract was entered into with European manufacturers for the purchase of the whole output of a certain metal fabrication involving a large amount of capital and risk. A partner was sent on this business to Europe, and the negotiation was of course strictly confidential. The firm was waited upon when its arrangements had been thus far completed, by a competitor who displayed a full acquaintance with all the details, and, demanding a participation in the enterprise, said he would "burst the whole business if denied." The demand and the threat were resented, but as they were reiterated in Europe, searching inquiries were made, when it transpired that certain metal-brokers and others were in the habit of inspecting the letter-books and invoices of the firm at night, getting their admission there-to by dishonest clerks and watchmen. On a reference to the law it was found that no criminal charge could be sustained, as the

admission was through the agents, and nothing had been feloniously removed from the premises. Among those concerned was a young man whom they had taken into employment in charity ; had been educated in the house, and finally promoted to be assistant invoice clerk. He had got access to the store at night on the plea of posting up arrears; and foreseeing that the investigation would lead to his dismissal, like the unjust steward he took steps to secure his future position at the expense of his employers. As assistant invoice clerk he was aware of irregularities in certain invoices, and having stolen these, he put himself into communication with the Custom-house officials, instead of informing his masters. Before submitting them to the officials, the case against the firm was drawn up by lawyers of high standing, to be placed in the hands of Custom-house detectives. The object of the clerk was to secure the portion of the fine which would be imposed, one-fourth, and the result proved that his calculation was correct, for he pocketed upwards of ten thousand guineas ;—but, let us glance at the way. The statutes of the United States are piled into a complicated and confused mass from the beginning of the century ; so confused, that but few men in the Union fully understand the code, and it would take a lifetime to comprehend its requirements, provisions, limitations, and interpretations. To confound confusion, this code requires invoices, certificates, and declarations in triplicate of shippers, consuls, owners, and consignees, in respect of cost, market values, freights, charges and commissions. But the Government may set all this aside, and assess on the judgment of appraisers. After their decision has been accepted by Government and merchant, the goods delivered, sold and consumed, the Government practices the right at discretion of referring the transaction back, if within five years, for further adjudication, for in the case of Phelps, Dodge & Co, this was actually done. Further, it is asserted that where the duty is per pound, per yard, or per dozen, without reference to the value of the article measured, yet, if the invoice does not correctly state the value, the goods are liable to confiscation. Nay, more. In the matter of some South African diamonds, forwarded to the care of the Collector for appraisement, instead of the owner or consignee, the absence of an invoice giving details unknown to any one, even the finder of the diamonds, was held to render the goods liable to forfeiture, and proceedings for forfeiture were actually instituted.

Messrs. Phelps, Dodge & Co. published a statement showing the difficulties under which the importer labors, and an extraordinary commentary on the Government it is, considering that the great Republic holds itself to be the leading trading community, and openly declares its design to make this port of New York, where these obstructive regulations exist, the first emporium in the world, commercially and financially. We believe it was Sidney Smith who said that a Bishop would have to be sacrificed before public attention could be attracted, and a reform instituted; and it is probable that the sacrifice of this leading American firm may be needed to commence the reformation so much needed in the Custom-house of New York; for this business has assumed a black-mailing character, conceived in dishonesty, commenced in dishonesty, continued and ended in dishonesty. With such a complicated code, with regulations, and a procedure apparently framed to entrap any importer whom an official might desire to trip up, we have politics so intertwined that the motive may come from a proceeding utterly unconnected with the merchant's business. When the Custom-house was on the trial into which the Executive had been lashed by the press after Mr. Murphy had been made Collector, the gentleman who gave the most damaging evidence against it was Mr. William E. Dodge, who emphatically asserted that the extortions of the General Order Storekeepers, and others connected with the Custom-house, had made New York the most expensive port in the whole world. That was a statement to be wiped out only in blood. It was a bombshell exploded in the nest of corruption, and it remains on record, a remark frequently referred to both in debates in Congress and discussions in the press. To add to the Custom-house grievance, the name of Phelps, Dodge & Co. headed the petition of 100 New York merchants for the redress of certain grievances; and the injury which has been done to the firm is all the more marked from the fact that Mr. Dodge threw all his great influence into the Grant political scale during the campaign; a service, however, which appears to have failed in propitiating that section of the party headed by the New York Custom-house. To make the case complete, not only had the Custom-house to make an example for the injuries it had sustained, but the officials were incited to this course by a direct gain, two per cent. of the fine being awarded to certain of their number. Thus we have a Government pil-

ing up obstructions at the entrance-gate of its domain; making it the interest of its officials to knock down and rob any of its customers who may be caught stumbling over one of these obstructions; and who, not content with the intricate obstacles, throw in political considerations to blind to the path of virtue, and endeavor to drive those determined to enter, into the path of fraud. At the same time we have this very Government publicly declaring New York to be the freest and most open port in the world, inviting mankind to make it the great dépôt of the globe, and predicting for it a future which is to constitute it the marvel of the planet.

The articles which the firm were alleged to have undervalued were tin and tin plates, the duties on which were *ad valorem*. A rigid investigation by the District Attorney and special agents, developed the fact that the Government had lost by undervaluation a sum of \$1,664, while it had gained in other cases more than sufficient to cover that amount. This inquiry led Mr. Davis, the District Attorney, to the conclusion that "the idea of defrauding the Government of its lawful duties had never entered into the minds of the above firm." But Mr. Special Agent Jayne had another card to play; for he had to work for his two per cent. If the firm fought the Government in the courts of law, there was every chance that the Government would be defeated, and where then would be Mr. Special Agent Jayne's two per cent.? He strongly advised the Secretary to take the sum the house was willing to pay, on the plea "that it was enormous, in comparison with the amount of undervaluation, so enormous that it would be exceedingly difficult to obtain a verdict for the amount claimed." Why did this firm, the chief partner of which has just been re-elected President of the New York Chamber of Commerce, accept the compromise proposed, paying \$271,000, under such circumstances? Why did one of the partners, we may ask, give the damaging evidence before the Congressional Committee on the Custom-house? They had brought upon them the enmity of a body in whose power they were made to feel they were. They had been made to feel that the ways of fraud were the pleasant ways in their metropolis; and they had been sharply corrected when they were caught bungling over the obstructions on the paths of rectitude. To fight the Custom-house was to destroy their business; the sum they regarded as blackmail, and as blackmail they paid it.



## APPENDIX.

[See page 53.]

## THE OFFICIAL CORRESPONDENCE.

WASHINGTON, April 27.—The following is the correspondence, from the files of the Treasury Department, in relation to the case of Phelps, Dodge & Co.:

[A.—Inclosure.]

CUSTOM-HOUSE, NEW-YORK, }  
SURVEYOR'S OFFICE, Jan. 3, 1873. }  
Hon. GEORGE S. BOUTWELL, Sec'y of the Treasury.

SIR:

I herewith inclose detailed report of result of examination of the books and papers of Phelps, Dodge & Co., importers of metals, doing business in this city. I have endeavored to make this statement as intelligible as possible, but the large sum involved in the suit that has been instituted, and the long and favorable standing of the house, must be my justification for explaining at more length than usual the exact character of the fraud, and the character and extent of the proof.

According to ordinary modes of reasoning, a house of the wealth and standing of Phelps, Dodge & Co. would be above the influences that induce the ordinary brood of importers to commit fraud. That same wealth and standing becomes an almost impenetrable armor against suspicion of wrong doing, and diverts the attention of the officers of the Government, preventing that scrutiny which they give to acts of other and less favored importers. It would require more than mere suspicion to justify a customs officer in questioning the truth of the declaration under oath of a member of this firm before the United States Consul, that an invoice of merchandise purchased by this house and consigned to them was in all respects true, that it represented the actual prices paid with all charges thereon, *that no other or different invoice* had been or would be furnished to any one.

It would for the same reason require almost positive proof to justify a suspicion that the members of this firm did not swear to the truth when they made entry of these goods, and solemnly declared on oath that no other or different invoice had been received by them, and that the invoice produced represented the true purchase price, and was in all respects true, and that if any other or different invoice or account was received by them they would immediately notify the Collector of that fact, and the officer that should have the temerity to proceed, without the most positive proof, to charge this, or any other house of like standing, with having failed to comply with the law in these most essential particulars, must expect to bring upon himself a shower of deserved odium.

Feeling most keenly the requirements of the situation, I proceeded with the investigation in this case with

great caution, but having in my possession certain papers purporting to be copies of invoices from the manufacturers of these goods, giving the sizes, kinds, and qualities, with shipping marks, dates, and number of packages, I proceeded to compare them with the Custom-House papers on file and found them to agree in every case in the following particulars: In number of packages, in marks, in sizes, and kinds of goods, in all the subdivisions that distinguished the different sizes and qualities under the different marks with the number of packages.

First, establishing beyond all question the identity of the goods; second, that these papers were different invoices of the same goods. These invoices differed from those in the Custom-House in the following particulars, viz.: In the prices paid, the difference per package being from three pence to four shillings sterling; in omitting in many cases the additional charge per package from the Custom-House invoice; in omitting from the Custom-House or consular invoice the cost of transportation from Wales, the place of delivery, to Liverpool, the place of shipment.

In other words, the identity of the goods being established, and the genuineness of these papers as invoices in the possession of the firm being established, this firm had deliberately violated every provision of the law of 1863 now governing the invoicing and entering of imported merchandise paying ad valorem duty. By diligently comparing these papers with their invoices on file they were found to be in the same handwriting of their Custom-House invoices, and I had reason to believe that a systematic fraud had been perpetrated.

I therefore called Judge Noah Davis, the then United States Attorney, to my office to go over the papers with me, and he fully concurred in my belief that a fraud had been committed, and assisted me in procuring a warrant for the seizure of their books and papers. After procuring the warrant, however, Judge Davis suggested that he come to my office and send for the members of the firm, and say to them that if they would deliver such books as I might indicate he would not have the warrant served. This course was pursued, and they delivered to me such books as I asked for. Upon examination of their invoice books exact *fac simile* invoices of those in the Custom-House were found, to which was found attached in many instances other invoices similar in character to those hereinbefore described.

This certainly brought the knowledge of the fraudulent transaction directly home to the members of the firm, and to each one guided by the invoice price either in selling the goods, making up the accounts, or in conducting the financial transactions of the house. The only escape and only answer that could be made

was that Phelps, Dodge & Co., in the transaction of their enormous business, knew nothing of the import or meaning of the oath taken before the U. S. Consul at Liverpool, knew and realized nothing of the nature of the oath taken almost daily by some member of the firm on entering their goods, knew nothing of the law enforced so vigorously and relentlessly against their less favored neighbors. In fact, they have done business in New-York, knowing and caring nothing for the laws, or they have deliberately and systematically disregarded and defied the law with intent to defraud the Government.

The total value of the invoices examined amounted to about one and three-quarters of a million of dollars, and this amount is plainly and certainly forfeited to the United States by the statute of 1863; not by any technical construction or far-fetched interpretation, but by deliberately and systematically stating the cost of their goods below the purchase price by a false invoice, made false for no conceivable reason but to lessen the duties to be paid to the United States.

Forfeited for not doing the things commanded by the statute, and which the law made it their duty to do.

Forfeited for doing what the statute in express terms forbids their doing.

Forfeited because they did defraud the United States.

Forfeited because no explanation can be given or motive found for systematically understating the cost of their goods, and thus defrauding the United States, except that they did intend to defraud the United States.

If the excuse or pretense that they acted in ignorance of the law can be made to serve, then the plea of ignorance may be interposed in any case, and the intent can never be inferred from any act, and the first elements of reasoning are set at naught in the search for some motive that will explain why they made the two sets of invoices.

The items proven in these several invoices to be undervalued, when taken separately, amount to about \$275,000.

The percentage of loss on the whole amount is, therefore, small, yet the importations of the house are very extensive, and if the same or nearly the same percentage of fraud extends through their importations, other than those included in the statement, and on which we have positive proof, the entire loss to the Revenue must have been some \$10,000 or \$15,000 per year, perhaps more.

Be this as it may, the evidence on these invoices is conclusive. I have the honor to be, very respectfully, your obedient servant,

B. G. JAYNE, *Special Agent.*

—  
[B.—One inclosure.]

OFFICE OF THE DISTRICT-ATTORNEY OF THE  
UNITED STATES FOR THE SOUTHERN DISTRICT  
OF NEW YORK, NEW-YORK, Jan. 2, 1873. /

Hon. E. C. BANFIELD, *Solicitor of the Treasury.*

SIR:

I herewith transmit an offer of compromise made on behalf of Phelps, Dodge & Co., in the suit of the United States against themselves. The suit is brought to recover nominally \$1,000,000, though the detailed statement furnished me discloses a few thousand dollars less.

The charge is for violations of the first section of the act of Congress of March 3, 1863.

The facts in the case are as follows: Acting upon information received by him, Special Agent Jayne applied about a week since for a warrant to seize the books and papers of the defendants. My predecessor, after a careful examination, deemed it a proper case for the issue of a warrant, but before it was served

sent for the senior member of the house, and he voluntarily produced the books, though one of the junior partners attempted to keep back the one book which was especially desired, being one containing invoices and memoranda. An examination showed, what was believed before, that the defendants had committed two apparently distinct species of fraud. One of these consisted in invoicing tin shipped from Liverpool at the price paid for it in Wales. There were with the invoices brief memoranda stating that fact in terms, the memoranda being sent by the Liverpool house, always in the same handwriting, and stating expressly "We invoice them to you at the prices paid in Wales," or words to that effect. There is at hand no means of showing the amount of undervaluation on this account, or we have no proof of the cost of such transportation. The other species of fraud consisted in trifling undervaluation of some single item or class of items, in an invoice in which most of the items were correct. There are, however, one or two instances in which a whole invoice seems to have been undervalued.

There is no actual evidence of any fraud in either class prior to January, 1871. The books neither before nor since contain any evidence of fraud, but it is found in the memoranda already referred to and in duplicate (true) invoices. If these ever existed for the importations prior to about January, 1871, they have been destroyed. The informer asserts that the frauds have extended over several years, and there is considerable indirect proof that this is so in the similarity of rates before and since January 1871, the invoices showing the same prices before 1871 in the classes of goods which are shown to have been undervalued since that time.

Of invoices entered since early in 1871 which are tainted with fraud the total value is \$1,726,060. The items in these invoices in which undervaluations occur amount to \$271,017 23, while the amount of undervaluation is \$6,658 78. The total amount of duties lost to the Government was \$1,664 68. The total importations of the defendants are about \$6,000,000 a year.

While the investigation was going on various proposals of compromise were made, but none of them were such that the Collector deemed it worth while to hold out any hope that they would be accepted, though I think that my predecessor was disposed to advise the acceptance of a considerably smaller sum than that now offered. I was personally cognizant of the whole proceedings, but took no active part in them until after I had taken my oath of office. I yesterday devoted considerable time to the examination of the papers.

After careful consideration I have decided to recommend the acceptance of the compromise offered. I am influenced to this course by the fact that the nominal amount claimed is so enormous in comparison with the amount of undervaluation and fraud that I believe it would be exceedingly difficult to obtain a verdict for the amount claimed. The smallness in amount of the fraud also makes the amount offered an adequate—perhaps an extraordinary—punishment for the offense committed. The proposal, therefore, seems to me to secure the two things that should be required, an adequate sum to punish the offenders and a payment into the Treasury, not only of the amount diverted from it, but of as large a sum as it is probable that litigation would secure.

I am a little sorry that my first formal official act should be to recommend a compromise for a sum which seems so much smaller than the amount the Government could justly claim. In the recommendation I make I have the concurrence not only of the officers of Customs, but of my experienced predecessor.

Your obedient servant,  
GEORGE BLISS, Jr.,  
U. S. Att'y, S. Dist. N. Y.

[C.—First Proposal.]

NEW-YORK, Jan. 2, 1873.

To GEO. BLISS, Jr., Esq., U. S. District-Attorney  
for the Southern District of New-York.

SIR:

As the attorneys of Messrs. Phelps, Dodge & Co., in the suit of the United States against Wm. E. Dodge and others comprising the said firm, this day instituted, for a claim of \$1,000,000 for alleged violations of the Revenue laws of the United States in relation to the importation of merchandise, and particularly the provisions of the first section of the act of Congress approved March 3, 1863, in respect of the entry of certain importations of merchandise within and during the five years last past, we are instructed by our clients—while protesting that no fraudulent intent has ever been entertained by them toward the Revenue of the United States in any of their acts respecting said or any importations made by them—to offer in compromise and settlement of the said claim of the United States in the said suit the sum of \$260,000 in United States currency, on the sole ground that there may have been acts in connection with the entry of the said importations in violation of the provisions of the said statutes and rendering it proper that such an offer as the above should be made. Yours, &c.,

WAKEMAN & LATTING,  
Attorneys for the Defendants.

WILLIAM FULLERTON, of Counsel.

[D.]

CUSTOM-HOUSE, NEW-YORK, Jan. 6, 1873.

Hon. E. C. BANFIELD,  
Solicitor of the Treasury Department.

SIR:

Suit was instituted against the firm of Phelps, Dodge & Co., for the recovery of \$1,000,000 currency, being the value of certain invoices of merchandise imported by them in violation of the first section of the act of March 3, 1863. The defendants offer the sum of \$260,000 to compromise the suit. I would recommend the acceptance of this offer for the following reasons:

*First:* This sum will more than reimburse the Government for any probable loss.

*Second:* This firm is composed of a large number of members, and the uncertainty of all human affairs, when taken in connection with the unavoidable delays of the law, is of itself a strong argument in favor of acceptance.

*Third:* The purpose and intent of the law will have been complied with.

Very respectfully, your obedient servant,

B. G. JAYNE, Special Agent.

[E.—Second proposal.]

NEW-YORK, Jan. 2, 1873.

GEORGE BLISS, Jr., Esq., U. S. Attorney for the  
Southern District of New-York.

SIR:

Whereas, a suit has been commenced this day against William E. Dodge and others, composing the firm of Phelps, Dodge & Co., to recover damages or penalties in the alleged sum of \$1,000,000, for certain

alleged violations of the Revenue laws of the United States; and whereas there are certain invoices of importations entered into the Custom-House by said company between the first day of January, 1868, and the first day of January, 1873, which are claimed by the United States to have been in violation of the Revenue laws of the United States.

Now for the adjustment and a compromise of all claims arising out of violations of the Revenue laws of the United States between said dates, and in settlement thereof, the mercantile firm of Phelps, Dodge & Co., by their attorneys, hereby offer to compromise said suit and all violations of said Revenue laws, by entry and payment of a judgment in said suit in favor of the United States for the sum of \$260,000 in currency without costs, which sum is hereby offered and is to be received by the Government in full compromise, satisfaction and payment of all duties, penalties and forfeitures for said or any violations of the laws of the United States by said Phelps, Dodge & Co., between said dates.

WAKEMAN & LATTING,  
Attorneys for said firm and defendants.

WILLIAM FULLERTON, HENRY KNOX, of Counsel.

[The following is the indorsement on the foregoing letter :

This second offer was presented to me by the Counsel of P. D. & Co., Jan. 25, and was verbally rejected, and after a long conference I intimated that I would recommend an offer in which the release should be limited to such frauds as were embraced in Mr. Jayne's reports, if the U. S. Attorney should concur.—E. C. B.]

[E. (2)—Telegram.]

CXLIX. NEW-YORK, Jan. 29, 1873.  
Solicitor BANFIELD, Treasury Department, Washington:

The circumstances under which our proposal of compromise was made having entirely changed, we have notified the Secretary of the Treasury that we have withdrawn the offer made by our attorneys.

PHELPS, DODGE &amp; CO.

[F.]

OFFICE OF THE DISTRICT-ATTORNEY OF THE  
UNITED STATES FOR THE SOUTHERN DISTRICT OF  
NEW-YORK, NEW-YORK, Feb. 8, 1873. }

Hon E. C. BANFIELD, Solicitor of the Treasury.

DEAR SIR:

I beg to transmit herewith a copy of proposition of compromise made by Messrs. Phelps, Dodge & Co., for the settlement of the suit of the United States against them. The proposal is, I understand, in the form which met the approval of the Department prior to the withdrawal of the original proposition. I have no hesitation, for the reasons heretofore given by me with reference to the prior proposition, in recommending the prompt acceptance of this offer. I beg to say that I hold on deposit, subject to the acceptance of the offer by the Department, checks for the amount proposed. Very respectfully, your obedient servant,

GEO. BLISS, Jr., U. S. Attorney.

